

## Part 199 - Taxation of Forest Land

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### §199.1 Definitions

When used in this Part:

a. **Approved management plan** means a plan approved by the department for the management of an eligible tract which will ensure the continuing production of a merchantable forest crop selected by the owner. Every approved management plan must meet the standards and requirements of section 199.6 of this Part. Such plan must be prepared by or under the direct supervision of a forester who may be the owner or an agent of the owner, including an industrial forester or a cooperating consultant forester.

b. **Assessor** means an elected or appointed officer or body of officers charged by law with the duty of assessing real property for the purposes of taxation or special ad valorem levies, for county, city, town, village, school district or special district purposes.

c. **Basal area** means the total cross sectional area of all live tree stems expressed as square feet per acre and measured at a point 4 1/2 feet above the ground.

d. **Certificate of approval** means the document issued by the department evidencing that the tract is an eligible tract for purposes of the real property tax exemption authorized by section 480-a of the Real Property Tax Law (RPTL).

e. **Commercial harvest cutting** means the removal of a forest crop from an eligible tract of forest land for which the owner receives economic value either from a sale or through utilization. Commercial harvest cutting shall not include up to 10 standard cords which may be cut annually for the owner's own use in accordance with sound forestry practices, or noncommercial cuttings prescribed in the approved management plan.

f. **Commitment** means a declaration to the department and the assessor, made on an annual basis by the owner of a certified eligible tract, in writing, on forms provided by the department, committing such tract to continued forest crop production for the next succeeding 10 years under the approved management plan.

g. **Compatible or supportive use** means any use of an eligible tract which is desired by the owner and compatible with or supportive of the continuing production of a merchantable forest crop. A use will be considered to be compatible or supportive unless it precludes forest crop production, involves permanent physical construction, or materially alters forest land with significant adverse impact upon the condition of forest crops. Compatible or supportive uses will be permissible but not mandatory components of approved management plans. The inclusion of a compatible or supportive use in an approved management plan does not represent the owner's undertaking to perform the use and does not imply that other compatible or supportive uses may not be undertaken on the eligible tract.

h. **Contiguous acres** shall refer to an eligible tract where forest lands are adjacent or near each other. These may be divided by nonforest land owned and controlled by the owner, or Federal, State, county or town roads, easements, rights-of-way, energy transmission corridors, or similar facilities, as long as vehicular access necessary for forest management purposes is not precluded.

i. **Cooperating consultant forester** means a forester who, or a forestry consultant firm which, has entered into an agreement with the department under the New York State cooperating consultant foresters program pursuant to section 9-0713 of the Environmental Conservation Law.

j. **Department** means the Department of Environmental Conservation.

k. **Diameter at breast height (DBH)** means the diameter of a tree measured 4 1/2 feet from the ground.

l. **Diameter class** means one of the following classifications of the stand:

1. **Seedling-sapling (SS)**--the majority of codominant trees are less than 5.5 inches DBH.
2. **Pole timber (PT)**--the majority of dominant and codominant trees are between 5.6 inches and 11.5 inches DBH.
3. **Saw timber (ST)**--the majority of dominant and codominant trees are 11.6 inches DBH or larger.

m. **Eligible tract** means a tract of privately owned forest land of at least 50 contiguous acres, exclusive of any portion thereof not devoted to the production of merchantable forest crops, which has a certificate of approval issued by the department. No otherwise eligible tract, or portion thereof, shall be deemed to be ineligible solely on the ground that any general or special State law, or rule or regulation adopted thereunder, partially restricts or requires further approval for forest crop production practices or activities on such tract or portion.

n. **Endangered and threatened species** means those species of fish, shellfish, crustacea, Wildlife and plants designated or listed as endangered species or threatened species under orders, rules or regulations issued by the department pursuant to section 11-0535 or section 9-1503 of the environmental conservation Law.

o. **Forester** means an individual who has graduated from a school of forestry recognized by the Society of American Foresters, or who possesses qualifications for the practice of forestry essentially equivalent to those possessed by a graduate of a school of forestry in a curriculum of forest management recognized by the Society of American Foresters.

p. **Forest land** means land primarily devoted to and suitable for forest crop production under accepted evenaged or unevenaged forest management systems through natural regeneration or through forestation and sufficiently stocked with forest trees to produce a merchantable forest crop within 30 years of time of original certification. Forest land shall consist of a stand or stands of commercial species of forest trees which contain at least either 500 stems per acre or 60 square feet of basal area per acre which shall be evenly distributed over the area of the stand. The department may approve a smaller number of planted trees per acre if the resulting spacing between trees is appropriate for satisfactory growth for the species being planted. For natural seedlings to be part of a stand, they must be at least one foot in height, and planted trees must be at least in their third growing season on the site.

q. **Forest management area** means a specific area of forest land to be managed under the approved management plan. A forest management area may be a planned sale area, anticipated commercial harvest cutting unit, or other defined operational area in which one or more stands, or portions of stands, will be managed collectively. A forest management area may contain any number of forest types, species, diameter classes, or site classes. Management systems and cutting prescriptions within a forest management area may be generic to all stands of the same forest type. Notwithstanding the foregoing, however, within every forest management area, stand prescriptions based upon individual stands shall be provided to the department pursuant to section 199.6(b) of this Part.

r. **Management system** means the silvicultural system to be employed on an eligible tract to assure the continued production of merchantable forest crops.

s. **Merchantable forest crop** means timber or pulpwood, including veneer bolts, sawlogs, poles, posts, chips and fuelwood, that is produced on forest land, has a value in the market and may be sold.

t. **Noncommercial cutting** means the elimination of those trees in a stand on an eligible tract which have no commercial net value in the marketplace because of size, condition or species and that are competing with crop trees.

u. **Owner** means the person or persons having legal title to the eligible tract.

v. **Person** means any individual, corporation, industry, partnership, association, firm, trust, estate or any other legal entity whatsoever, but shall not include the State, any municipality, or any governmental agency.

w. **Site class** means the classification of the stand in terms of the inherent capacity to grow crops for commercial harvest cuttings.

x. **Stand** means an aggregation of trees or other growth occupying a specific area and sufficiently uniform in species composition, arrangement or condition so as to be distinguishable from adjacent areas. Every stand shall be forest land, as defined in this section.

y. **Stand prescription** means the stand analysis documents specifying all of the work necessary to accomplish the management system in a stand and will be based upon an onsite inspection of the stand by a forester.

z. **Stumpage value** means the current fair market value of a merchantable forest crop as it stands prior to the time of sale, cutting, required cutting or removal. Stumpage value shall be determined by the department through one or more of the following methods: the sale price of the crop in an arm's-length sale, a review of solicited bids, the stumpage price report prepared by the department, comparison with like sales on State forests or private lands, or other appropriate means to assure that a fair market value is established within an acceptable range based on the appropriate geographic area.

aa. **Type** means the classification of the stand according to generally accepted forest procedures.

## **§199.2 Scope**

This Part shall be interpreted to carry out the policies of the State as set forth in section 480-a of the Real Property Tax Law or any successor statute to provide a means by which present and future forest lands may be protected and enhanced as a viable segment of the State's economy and to assist in the protection of the environmental benefits of the State's forest resources.

## **§199.3 Confidentiality**

a. Information contained in applications for a certification or any supporting documents shall be considered not to be confidential unless the owner claims and substantiates to the satisfaction of the department pursuant to the procedures contained in Part 616.7 of this Title that the information contained in the application is protected by section 87, subdivision 2, paragraph (d) of the Public Officers Law.

b. Any information in the possession of the department may be offered and received in evidence, where otherwise admissible, in an adjudicatory or court proceeding authorized by

law. Such information also must be provided to a government official whenever possession of the information is necessary to the performance of such official's duties. However, the department shall take such precautions as may be consistent with the nature of the information and the circumstances of its release necessary to protect the confidentiality of any information which is required to be held confidential pursuant to subdivision (a) of this section or under other applicable provisions of law.

#### **§199.4 Access to eligible tracts**

The department, including its employees, agents, and representatives, and the assessor shall have the right at all reasonable times after proper notification of the owner and proper identification to the owner as department employees, agents or representatives or the assessor, to enter and inspect any eligible tract or any tract subject to application for the purpose of ascertaining compliance with section 480-a of the Real Property Tax Law or this Part.

#### **§199.5 General certification provisions**

- a. Separate applications must be made for each eligible tract.
- b. A completed application shall consist of:
  1. a properly completed application on forms provided by the department;
  2. two copies of a management plan prepared by a forester in accordance with section 199.6 of this Part;
  3. a location map or aerial photograph which clearly identifies the tract that is subject to application.
- c. The owner shall have the boundary lines and lines designating noncommitted acreage of eligible tracts submitted for certification permanently marked so as to be easily identified on the ground. Suitable marking is a blazed and painted or painted line. Fences, stone walls, posters, and other man-made or natural features are acceptable provided they can be easily recognized as the boundary and are approved by the regional forester of the department.
- d. The department shall issue a certificate of approval for an eligible tract whenever the following requirements are met:
  1. the owner submits a completed application; and
  2. the owner's management plan meets the requirements of section 199.6 of this Part.

e. Completed applications will be approved or rejected within 60 days of receipt. The department reserves the right to reject applications in whole or in part whenever the application is not in compliance with applicable provisions of law or of this Part. The notice of rejection will be accompanied by reasons. The owner shall have the opportunity to remedy the defects cited in the notice of rejection and resubmit the application for certification to the department within 90 days of the notice of rejection.

f. All certificates of approval issued by the department shall require compliance with the approved management plan. The department may also impose, as terms of the certificate of approval, such conditions as it may deem necessary or appropriate to satisfy the provisions of the law or this Part.

### **§199.6 General management plan provisions**

a. Each approved management plan shall contain the following:

1. application number provided by the department;
2. identification of the owner and the tract;
3. a narrative listing of the merchantable forest crops to be continually produced in each stand throughout the eligible tract as a result of the implementation of the approved management plan;
4. a narrative listing of endangered and threatened species known to exist on the eligible tract;
5. a type map drawn neatly in ink which shall include the following:
  - i. boundaries of eligible forest land drawn at a scale acceptable to the department; ineligible land or lands not to be included under this Part must be clearly identified on the map and acreage(s) individually indicated;
  - ii. stands or forest within eligible tract delineated as to management areas, number and acreage;
  - iii. physical features such as buildings, roads, streams and power lines identified;
  - iv. north arrow;
  - v. name, address and title of person who prepared the map and the date prepared;
  - vi. name and address of owner of the tract; and
  - vii. application number provided by the department;

6. a listing of the stands, or forest management areas, that comprise all of the forest land to be committed pursuant to the management plan. The listing shall include the following information for each stand or forest management area:

- i. stand or forest management area number;
- ii. stand type or forest management area types;
- iii. diameter class or classes;
- iv. site class;
- v. acreage estimated to the nearest whole acre;
- vi. species composition expressed as a percentage;
- vii. basal area;
- viii. identification of every area more than an acre in size that is not eligible;

If the listing is by forest management area, the management plan shall also identify stand numbers and estimated stand acreages for each stand within each forest management area;

7. a work schedule for each of the next 15 years, which shall contain all commercial and noncommercial cuttings, road construction and other treatments needed for continued certification. The approved management plan shall prescribe noncommercial treatments necessary to attain the production of the selected merchantable forest crops specified in paragraph (3) of this subdivision. Such noncommercial treatments shall be accomplished at not less than the greater of the following rates:

- i. 10 acres per year; or
- ii. five percent of the total acreage in the certified tract needing treatment;

stands which demonstrate a productive capacity of less than 50 cubic feet per acre per year may be exempted from the noncommercial treatment requirement where the selected merchantable forest crops specified in paragraph (3) of this subdivision do not economically justify such treatment;

8. a description of compatible or supportive uses that are desired by the owner;

9. a description of any cuttings or removals of merchantable forest crops during the past three years, including the date, location and cutting prescription of such cuttings or removals; lands from which a merchantable forest crop has been cut or removed within three years prior to the time application will be ineligible for certification unless such

cutting or removal was accomplished under a forest management program designed to provide for the continuing production of merchantable forest crops; and

10. the signature and typed or printed name of the forester who prepared or supervised the preparation of the management plan and the date prepared, together with certification by the forester that all land shown as eligible land on the type map is forest land as defined in section 199.1 of this Part.

b. In addition to the information required by subdivision (a) of this section, the following information shall be provided at least 30 days prior to any commercial harvest cutting or noncommercial cutting. No commercial harvest cutting or noncommercial cutting may be commenced before approval of the department within 30 days of receipt of such information in a manner acceptable to the department:

1. management systems or systems on the portion of the tract to be cut;
2. identification of the stands or forest management area(s) to be cut and approximate acreage to be cut within the stands or forest management area(s); cutting prescription with approximate average basal areas before and after the cut; merchantable forest crop or crops to be cut and volume by species; specifications to accommodate endangered or threatened species, if any;
3. description of necessary road layout and erosion control and sediment control measures;
4. description of noncommercial work, if any, to be undertaken on the area to be cut; and
5. the name and address of the person under whose supervision the harvest will be conducted.

c. The owner shall have the right to select management systems and cutting prescriptions, provided they are consistent with the approved management plan and designed to assure the continuing production of merchantable forest crops identified in the approved management plan. Noncommercial cuttings scheduled for an eligible tract must be completed during the year in which they are scheduled.

d. Grazing by domestic animals is prohibited on all eligible tracts.

## **§199.7 Filing procedures**

a. It is the responsibility of the owner to comply with filing requirements of subdivision (3) of section 480-a of the Real Property Tax Law by:

1. filing the original certificate of approval with the clerk of the county in which the eligible tract is located;
2. filing the original application for real property tax exemption with the appropriate assessor on forms prescribed by the State Board of Equalization and Assessment, together with the commitment certified by the department and recorded by the clerk of the county; and
3. filing with the appropriate assessor a commitment certified by the department prior to the taxable status date in each year for which a real property tax exemption is sought.

b. Implementation of the requirements of subdivision 5 of section 480-a of the Real Property Tax Law shall be according to the following schedule and procedures:

1. At least 90 days prior to any commercial harvest pursuant to an approved management plan, the owner shall file with the department on forms provided by the department, a notice of commercial harvest cutting.
2. The department, within 15 days of receipt of such notice, shall determine the compliance of the proposed harvest with the approved management plan and upon such determination, certify the stumpage value of such harvest to the owner and to the county treasurer of the county or counties in which the tract is situated.
3. No later than 30 days after receipt of the certification of the value of such harvest, the owner shall pay a stumpage tax of six per centum of the certified value to such county treasurer.

c. Notwithstanding the foregoing provisions of this section, if the stumpage value of a merchantable forest crop will be determined with reference to a scale to be conducted after the commencement of the proposed cutting, the owner may elect to be taxed in accordance with this subdivision. Such election shall be made not less than 30 days in advance of commencement of the cutting, on a properly completed notice of commercial harvest cutting. Such notice shall include information as to the anticipated volume estimate, scaling method, and the schedule and length of the cutting period, not to exceed one year. If a proper election has been made in accordance with this subdivision, the department will notify the owner and the appropriate assessor or assessors before any cutting takes place on the eligible tract, and the department will certify the scaled stumpage value to the owner of the tract and to the county treasurer of the county or counties when the cutting has concluded. No later than 30 days after the receipt of such certification of value, the owner shall pay a six per centum tax on the stumpage value of the merchantable forest crop to such county treasurer.

## **§199.8 Required cuttings**

a. The department may serve notice upon the owner of a certified tract directing such owner to make a cutting as prescribed in the approved management plan for such tract. Should such cutting involve the sale or utilization of a merchantable forest crop, not less than 30 days in advance of cutting the owner shall give notice to the department of the stumpage value, amount and location of the cutting on a form prescribed by the department. The department shall, within 15 days after receipt of such notice from the owner, certify the stumpage value, if any, to the owner and to the county treasurer of the county or counties in which the tract is situated. No later than 30 days after receipt of such certification of value, the owner shall pay a six per centum tax on the certified stumpage value to such county treasurer.

b. Any cutting of a merchantable forest crop under this section must be conducted within two years from the the date of notice. Upon failure of the owner within such period to conduct such cutting, the department shall certify to the owner and the county treasurer of the county or counties the stumpage value of such merchantable forest crop. No later than 30 days after receipt of such certification of value, the owner shall pay a six per centum tax on the real property certified stumpage value to such county treasurer.

c. Any noncommercial cutting under this section must be conducted within the tax year prescribed on the certificate of approval.

d. If the owner, within the period prescribed by this section, makes such cuttings as directed by the department, the tract shall continue to be certified as long as the owner shall continue to comply with the provisions of this Part and manage the tract in the manner prescribed in the approved management plan.

## **§199.9 Amendment**

An approved management plan may be extended or amended by filing a written request with the department indicating the nature and substance of the change. The department will determine the acceptability of the proposed change and shall inform the owner, in writing, of its determination within 10 days of receipt of the request. If the request for change is not approved by the regional forester of the department, the owner may appeal, within 30 days of its receipt, the decision of the regional forester by filing a written appeal to the Director of the Division of Lands and Forests. When a request for change is approved, the department shall inform the owner of the necessary administrative and technical procedures to follow to effect the change in conformance with the rules and regulations.

a. The owner must submit amendments of the approved management plan whenever necessary to assure the management plan is for a period at least as long as the commitment.

b. If the owner continues to file the annual commitment form, an amendment to the management plan must be filed every five years to assure the management plan is for a period at

least as long as the commitment. The owner also must submit amendments whenever required under section 199.10 of this Part, whenever there is a material change in the acreage or ownership or location of any stands or forest management area, and whenever a cutting changes or will be delayed or substantially altered because of destruction or damage to the forest crop by fire, infestation, disease, storm, flood or other natural disaster, act of God, accident, trespass or war.

## **§199.10 Revocation**

a. The department shall notify the owner in writing of its intention to issue a notice of violation to the owner at least 30 days prior to the issuance of such notice of violation to the county and shall offer the owner an opportunity to meet with the department representatives informally for the purpose of resolving alleged violations. If the parties can agree to a resolution of the alleged violations, then a written memorandum setting forth the terms of the agreement shall be prepared and signed by the parties. This memorandum shall become part of the approved management plan.

b. If the parties cannot agree, the owner has the right to request in writing a hearing within this initial 30-day period. If the owner does not request a hearing within 30 days of receipt of the notice provided for in this subdivision, then such failure will be deemed a waiver of the right to a hearing and the department may proceed to issue a notice of violation to the owner and to the county. If the owner does request a hearing, the matter will be referred to an Administrative Law Judge for scheduling a hearing in accordance with procedures of the State Administrative Procedure Act and Part 622 of this Title. The owner and assessor or assessors shall be given notice of such hearing and an opportunity to be heard.

c. A notice of violation may be issued for any of the following reasons:

1. the certified eligible tract or portion thereof is converted to a use which precludes or is inconsistent with management of the land for forest crop production;
2. the owner fails to give notice of a proposed cutting on such tract or fails to timely pay the appropriate tax on the stumpage value of the merchantable forest crop determined pursuant to either subdivision (5) or (6) of section 480-a of the Real Property Tax Law;
3. the owner fails to comply with the approved management plan for such tract at any time during the commitment period;
4. the owner fails to make a timely cutting in accordance with the provisions of subdivision (6) of section 480-a of the Real Property Tax Law, after service of notice by the department to make such a cutting; or
5. the owner voluntarily requests immediate withdrawal for all of a portion of the certified eligible tract by submitting a notarized written request to the department and assumes obligation for appropriate penalties.

d. Notwithstanding the finding of an occurrence described in paragraph (2), (3) or (4) of subdivision (e) of this section, the department may determine that a violation has not occurred if the failure to comply was due to reasons beyond the control of the owner and such failure can be corrected forthwith without significant effect on the overall purpose of the management plan.

e. A notice of violation issued under this section shall be given by the department to the owner, to the appropriate assessor(s), and to the county treasurer of the county or counties in which such tract is located. Upon receipt of a county treasurer's tax search or other proof satisfactory to the department that penalties, stumpage taxes and interest imposed by section 480-a of the Real Property Tax Law have been fully paid or satisfied, the department shall revoke the certificate of approval for the tract, and notice of such revocation shall be given to the owner and to the county clerk of the county or counties in which the tract is located. In the event of a revocation for conversion of a portion of the certified eligible tract, the revocation shall apply only to the portion of the land so converted.

f. The certificate of approval of a certified tract for which no notice of violation has been issued shall be revoked without penalty upon receipt from the owner of receipted property tax bills or other proof satisfactory to the department that nine years have passed from the year of the last certified commitment filed with the assessor. Notice of such revocation shall be given to the owner and to the county clerk of the county or counties in which the tract is located.

## **§199.11 Involuntary and partial conversions**

a. The owner of a certified tract shall not be subject to any penalty that would otherwise apply because such tract or any portion thereof is converted to a use other than forest crop production by virtue of:

1. an involuntary taking by eminent domain or other involuntary proceeding, except a tax sale;
2. a voluntary proceeding, providing such proceeding involves the establishment of rights-of-way for public highway or energy transmission purposes wherein such corridors have been established subsequent to public hearing as needed in the public interest and are environmentally compatible;
3. oil, gas or mineral exploration, development or extraction activity undertaken by an independent grantee pursuant to a lease or other conveyance of subsurface rights recorded more than 10 years prior to the date of the original certificate of approval issued by the department for the tract; or
4. where all or a substantial portion of the certified tract is destroyed or irreparably damaged by reason of an act of God or a natural disaster.

b. In the event the land converted to a use other than forest crop production constitutes only a portion of such tract, the management plan shall be amended by

the owner to exclude that portion so converted, and the certificate of approval shall be revoked with respect to the converted portion, after notice and opportunity for hearing, and notice of such partial revocation shall be given to the owner, to the appropriate assessor(s) and to the clerk of the appropriate county or counties. Remaining parcels not so converted will remain certified under this Part and subject to the management plan, regardless of size, except that should any remaining parcel be no longer accessible for continued forest crop production, the department shall, after notice and hearing, and after all relevant penalties, stumpage taxes, and interest are paid, revoke the certificate of approval for the inaccessible portion or portions, and notice of such partial revocation shall be given to the owner and to the clerk of the appropriate county or counties.

c. The owner of a certified tract shall not be subject to penalty under this section by reason of the fact that a forest crop on the certified tract or portion is, through no fault of the owner, damaged or destroyed by: fire, infestation, disease, storm, flood or other natural disaster, act of God, accident, trespass or war. The owner shall, as soon as practicable, provide the department with notice of such disaster and of the emergency steps taken to cope with the same. The management plan shall be amended as necessary. If a merchantable forest crop is to be cut or removed in connection with necessary salvage operations resulting from any such event, the owner shall give prior notice of cutting, and the department shall certify the stumpage value as provided in section 199.8 of this Part. Nothing in this subdivision shall be construed to subject any person for immediate action taken in good faith in the event of an emergency.