

**Pinetum, Inc.**  
**v.**  
**Town of Sullivan**

**Docket No. 8080-90**

**DECISION**

Introduction

The "Taxpayer" appeals, pursuant to RSA 79-A:10, the "Town's" assessment of a \$26,000 land-use-change tax (the Tax) imposed pursuant to RSA 79-A:7 and REV. Part 1203. The Taxpayer challenged the assessment of the Tax. The Taxpayer also argued that if the Tax was properly assessed, the amount of the Tax, which was based on a full-value assessment of \$260,000, was excessive. The Taxpayer has the burden of proof on both points. See RSA 79-A:10; RSA 76:16-a; Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). For the reasons stated below, we find the Taxpayer failed to carry this burden, and we find the Town properly assessed the Tax.

Facts

The board will make a brief recitation of the facts. We also draw attention to our rulings on the Town's requests for findings of fact, which are incorporated herein.

In December 1986 the Taxpayer purchased the "Property," which was under current use as "managed forest." The Property consisted of approximately 287 acres of wooded land that had been subject to a forest-management plan. The existing plan was designed to provide for periodic yields of certain timber and included cuttings both for harvesting and for management purposes. The Property also had areas unsuitable for commercial forestry because of topography and wetlands.

After purchasing the Property, the Taxpayer hired Wayne L. Young, a forester, to "take off the bulk of the timber assets." As evidenced by the

photographs, maps and testimony, the Taxpayer achieved this goal by the spring of 1989 when all the commercially valuable and harvestable lumber had been cut.

The Town contended this clear cutting of all commercial lumber resulted in the loss of current-use status as a managed forest, justifying the imposition of the Tax. In an attempt to refute this, the Taxpayer argued harvesting all commercially valuable trees and then allowing the trees to regenerate on their own was an acceptable silvicultural practice. This management approach was pegged as "mother nature as forester" and "passive forest management."

#### Issues

This decision must address two issues<sup>1</sup>:

1. Did the Taxpayer's action or inactions justify the loss of current-use status and imposition of the Tax?; and
2. If yes, was the Town's full valuation, upon which the Tax was based, correct?. We answer both questions in the affirmative.

#### Discussion of First Issue--Imposition of the Tax

Under RSA 79-A:7, "Land which has been classified as open space \*\*\* pursuant to [RSA ch. 79-A] shall be subject to a land use change tax when it is changed to a use that does not qualify for open space assessment." REV 1203.02 states the change occurs when "a physical change takes place to the land, which is contrary to the requirements of the category under which the land is classified \*\*\*." The Tax was properly assessed here because a taxable change occurred when the Taxpayer abandoned silvicultural treatment and commercially clear cut the Property.

To qualify as "forest land," and more specifically as "managed forest land," the land must be subject to and receiving silvicultural treatment. RSA

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<sup>1</sup> A third issue, which was not specifically raised, is whether the Taxpayer's action could result in a change of classification from "managed forest" to "productive wild land." Based on RSA 79-A and the current use regulations, the Taxpayer could not make this change in classification for several reasons, including i) failure to comply with the notice requirement of REV 1204.06 (a) (1) and ii) once cut the land would have to sit idle for five years to qualify as productive wild land under REV 1205.04. See also RSA 79-A:7 I and REV 1204.05.

79-A:2 V; REV 1205.03(a). "Silviculture" means maintaining the on-going

productivity of forest trees and land." REV 1201.06. Thus, managed forest and silvicultural treatment envisions two distinct things: 1) an active management of the land; and 2) a plan for a continuing supply of harvestable timber. These requirements will be elaborated next, but the Taxpayer's actions here failed to meet either criteria.

The current-use law and regulations establish that the managed-forest classification requires active silvicultural treatment. See Foster v. Town of Henniker, 132 N.H. 75, 79 (1989), Blue Mountain Forest Association v. Town of Croydon, 117 N.H. 365, 377 (1977). The statute and regulations use active words such as "receiving," "maintaining" and "actively devoted to." RSA 79-A:2 V., Moreover, the regulations provide for two types of forest land--managed under REV 1205.03 and unmanaged (wild) under REV 1205.04(a)(2). Therefore, while mother nature may be a good forester, she can only be employed as the sole forester when the land is classified as "wild land, unmanaged forest." If a landowner wants his/her land classified as "managed forest," the landowner will have to give mother nature some assistance in managing the forest.

In addition to active silvicultural treatment, to qualify as "managed forest land," the land must be capable of and be producing an on-going timber crop. REV 1205.03(1) states three conditions for land to qualify as managed forest:

(1) Qualifying forest land shall be a tract, as defined in Rev 1201.07, of undeveloped land actively devoted to the practice of silviculture, subject to the following conditions:

- a. The tract of land shall be primarily used for the growing and harvesting of repeated forest crops, including timber products, maple sap and naturally seeded Christmas trees.
- b. The tract of land shall support a reasonable stand of commercial forest trees for the location, topography, and soil conditions, or show evidence that the owner has taken or is taking steps to bring stocking of commercial forest trees to levels reasonable for this site.
- c. The tract of land shall show evidence that the owner is following generally accepted forest improvement and harvest practices and is complying with state and local

forest laws and with rules adopted by the commissioner of the department of resources and economic development under RSA 218:5, III.

The testimony was unrefuted. All commercially valuable timber had been harvested, and it would be several years before a good commercial stand of trees would again exist. The witnesses for both sides agreed more selective cutting, which would yield repeated harvests, would include a cutting every 8-10 years. The witnesses also agreed the Property would not yield a "good" harvest of saw timber for 30-60 years. There could be some productive cutting before the 30-60 years had run (around 20-30 years), but such cuttings would be for a chip cut, which is a low yielding cut.

In Foster, 132 N.H. at 82, the court stated:  
With respect to forest land, the statute contemplates management with a view toward stability and conservation of forest resources. It does not, unless silvicultural practices would in rare cases dictate, contemplate clear cuts and harvesting to the extent that a recovery period of 20-30 years is required to return the land to its status as a forest.

Before the Taxpayer commercially clear cut, the Property had been managed to yield on-going timber crops. The Property had a good crop of mature trees before the cut. When the Taxpayer clear cut the Property, especially without any replanting, the Property lost its ability to yield repeated timber crops, thereby failing to meet the criteria to be classified as "managed, forest land."

For the above reasons, the Town correctly assessed the Tax. The next issue is whether the assessment upon which the Tax was based was correct.

Discussion of the Second Issue--Calculation of the Tax

The Taxpayer claimed the Town's full-value assessment of \$260,000 as of April 17, 1989, was excessive. We find the Taxpayer failed to prove this position for the following reasons:

- 1) the Taxpayer presented no expert testimony on the Property's value as of April 1989;
- 2) the Taxpayer had purchased the Property in December 1986 for \$175,000; and

3) the Taxpayer received approximately \$140,000 to \$150,000 for the timber cut from the Property.

Conclusion

The Town did not err in assessing the Tax, and the Taxpayer did not prove the Town's full-value assessment was incorrect.

REQUEST FOR FINDINGS OF FACT

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Granted.
7. Granted.
8. Granted.
9. Granted.
10. Neither Granted nor Denied.
11. Granted.
12. Granted.
13. Granted.
14. Granted.
15. Granted.
16. Granted.
17. Granted.
18. Granted.
19. Granted.
20. Neither Granted nor Denied.
21. Granted.
22. Granted.
23. Granted.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Ignatius MacLellan, Member

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Michele E. LeBrun, Member

Date: June 17, 1991

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Thomas P. McLaughlin, representative for Pinetum, Inc., taxpayer; and the Chairman, Selectmen of Sullivan.

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Melanie Ekstrom, Deputy Clerk

Date: June 17, 1991