

**Vermont Statutes**

**Title 32. Taxation and Finance**

**Chapter 129. GRAND TAX LISTS**

*Current through 2011 Legislative Session*

**§ 4222. Procedure**

The listers shall meet at the time and place designated in such notice to hear all persons aggrieved as aforesaid who have filed their objections in writing; and on that day, and from day to day thereafter, shall hear those appearing in person or by agents or attorneys until all such objections have been heard and considered. All objections filed in writing with the board of listers at or prior to the time fixed for hearing appeals shall be determined by the board notwithstanding that the person filing the objections fails to appear in person, or by agent or attorney, and proper notification of the listers determination shall be sent to the taxpayer.

**History.** Amended 1973, No. 86, § 1, eff. for the tax year beginning April 1, 1974, and thereafter.

## Vermont Statutes

### Title 32. Taxation and Finance

#### Chapter 135. EDUCATION PROPERTY TAX

*Current through 2011 Legislative Session*

##### § 5401. Definitions

As used in this chapter:

(1) "Coefficient of dispersion" is the average absolute deviation expressed as a percentage of the median ratio, and for a municipality in any school year shall be determined by the director of property valuation and review as follows:

(A) calculate the ratio of the listed value to the fair market value of each property used in determining the equalized education property value of the municipality as required by section 5406 of this title;

(B) determine the median of the ratios calculated in subdivision (A) of this subdivision;

(C) determine the absolute deviation of each ratio from the median ratio calculated in subdivision (B) of this subdivision;

(D) calculate the average absolute deviation.

(2) "Commissioner" means the commissioner of taxes.

(3) "Common level of appraisal" means the ratio of the aggregate value of local education property tax grand list to the aggregate value of the equalized education property tax grand list.

(4) "Director" means the director of the division of property valuation and review.

(5) "Education property tax grand list" means the list of property determined pursuant to section 5404 of this title. When the listed value of real property for school tax purposes is adjusted by a board of civil authority or a court, that board or court shall make a corresponding adjustment to the listed value for purposes of taxation under this chapter.

(6) "Equalized education property tax grand list" means one percent of the aggregate fair market value of all nonresidential and homestead property that is required to be listed at fair market value as certified during that year by the director of property valuation and review under section 5406 of this title, plus one percent of the aggregate value of property required to be listed at a value established under a stabilization agreement described under section 5404a of this title, plus one percent of the aggregate use value established under chapter 124 of this title of all nonresidential property that is enrolled in the use value appraisal program.

(7) "Homestead":

(A) "Homestead" means the principal dwelling and parcel of land surrounding the dwelling, owned and occupied by a resident individual as the individual's domicile, or for purposes of the renter property tax adjustment under subsection 6066(b) of this title, rented and occupied by a resident individual as the individual's domicile.

(B) The parcel of land surrounding the dwelling shall be determined without regard to any road which intersects the land. If the parcel of land surrounding the dwelling is owned by a cooperative housing corporation incorporated under 11 V.S.A. chapter 14, or owned by a nonprofit land conservation corporation or community land trust with exempt status under Section 501(c)(3), the homestead includes a pro rata part of the land upon which the dwelling is built, as determined by the cooperative corporation, nonprofit corporation, or land trust.

(C) A homestead may consist of a part of a multi-dwelling or multi-purpose building, including cooperative property occupied as a permanent residence by a member of a cooperative housing corporation incorporated under 11 V.S.A. chapter 14. A mobile home may constitute a principal dwelling for purposes of this chapter.

(D) A dwelling owned by a trust may qualify as a homestead if it meets the requirements of subsection 6062(e) of this title.

(E) A homestead also includes a dwelling on the homestead parcel owned by a farmer as defined under section 3752 of this title, and occupied as the permanent residence by a parent, sibling, child, grandchild of the farmer, or shareholder, partner, or member of the farmer-owner, provided that the shareholder, partner, or member owns more than 50 percent of the farmer-owner, including attribution of stock ownership of a parent, sibling, child, or grandchild.

(F) A homestead also includes any other improvement or structure on the homestead parcel which is not used for business purposes. A homestead does not include that portion of a principal dwelling used for business purposes if the portion used for business purposes includes more than 25 percent of the floor space of the building.

(G) For purposes of homestead declaration and application of the homestead property tax rate, "homestead" also means a residence which was the homestead of the decedent at the date of death, and from the date of death through the next April 1 is held by the estate of the decedent and not rented.

(8) "Education spending" means "education spending" as defined in 16 V.S.A. §4001(6).

(9) "Municipality" means a city, town, unorganized town, village, grant or gore; or, in the case of property located within the territorial limits of an incorporated school district, "municipality" means an incorporated school district.

(10) "Nonresidential property" means all property except:

(A) Property which is exempt from the municipal property tax by law and not by vote of the municipality.

(B) Property which is subject to the tax on railroads imposed by subchapter 2 of chapter 211 of this title, the tax on steamboat, car and transportation companies imposed by subchapter 3 of chapter 211 of this title, the tax on telephone companies imposed by subchapter 6 of chapter 211 of this title, or the tax on electric generating plants imposed by chapter 213 of this title.

(C) Homesteads declared in accordance with section 5410 of this title.

(D) Personal property, machinery, inventory and equipment, ski lifts and snow-making equipment for a ski area; provided, however, this subdivision shall not exclude from the definition of "nonresidential property" the following real or personal property:

(i) utility cables and lines, poles and fixtures (except those taxed under subchapter 6 of chapter 211 of this title); provided that utility cables, lines, poles and fixtures located on homestead property and owned by the person claiming the homestead shall be taxed as homestead property;

(ii) gas distribution lines (except aboveground meters, regulators and gauges, and leased water heaters are excluded personal property).

(E) The excess valuation of property subject to tax increment financing in a tax increment financing district established under subchapter 5 of chapter 53 of Title 24 to the extent that the taxes generated on the excess property valuation are pledged and appropriated for interest and principal repayment on bonded debt or prefunding future tax increment financing district debt and to the extent approved for this purpose by the Vermont economic progress council upon application by the district under procedures established for approval of tax stabilization agreements under section 5404a of this title, and that any such action shall be included in the annual authorization limits provided in subdivision 5930a(d)(1) of this title.

(F) Property owned by a municipality which is located within that municipality and which is used for municipal purposes including the provision of utility services.

(G) Machinery and equipment used directly in the processing of whey, whether or not such machinery or equipment is attached or affixed to real property.

(H) Real property, excluding land, consisting of unoccupied new facilities, or unoccupied facilities under renovation or expansion, owned by a business that has obtained the approval of the Vermont economic progress council under section 5930a of this title that is less than 75 percent complete, not in use as of April 1 of the applicable tax year, and for a period not to exceed two years.

(I) Real property consisting of the value of remediation expenditures incurred by a business that has obtained the approval of the Vermont economic progress council under section 5930a of this title for the construction of new, expanded or renovated facilities on contaminated property eligible under the redevelopment of contaminated properties program pursuant to 10 V.S.A. §6615a(f), including supporting infrastructure, on sites eligible for the United States Environmental Protection Agency "Brownfield Program," for a period of ten years.

(J) Buildings and fixtures of wind-powered electric generating facilities taxed under section 5402c of this title.

(11) "Education property value" means the aggregate fair market value of all nonresidential and homestead real property that is required to be listed at fair market value as certified during that year by the director of property valuation and review under section 5406 of this title, plus the aggregate value of property required to be listed at a value established under a stabilization agreement described under section 5404a of this title, plus the aggregate use value established under chapter 124 of this title of all nonresidential real property that is enrolled in the use value appraisal program.

(12) "Excess spending" means:

(A) the per equalized pupil amount of:

(i) the district's education spending, plus any amount required to be added from a capital construction reserve fund under 24 V.S.A. §2804(b); minus

(ii) the portion of education spending which is approved school capital construction spending or deposited into a reserve fund under 24 V.S.A. §2804 to pay future approved school capital construction costs, including that portion of tuition paid to an independent school designated as the public high school of the school district pursuant to 16 V.S.A. §827 for capital construction costs by the independent school which has received approval from the state board of education, using the processes for preliminary approval of public school construction costs pursuant to 16 V.S.A. §3448(a)(2); and minus

(iii) the portion of education spending attributable to the district's share of special education spending in excess of \$50,000.00 for any one student in the fiscal year occurring two years prior; and minus

(iv) a budget deficit in a district that pays tuition to a public school for all of its students in one or more grades in any year in which the deficit is solely attributable to tuition paid for one or more new students who moved into the district after the budget for the year creating the deficit was passed;

(B) in excess of 125 percent of the statewide average district education spending per equalized pupil in the prior fiscal year, as determined by the commissioner of education on or before November 15 of each year based on the passed budgets to date.

(13) "District spending adjustment" means the greater of: one or a fraction in which the numerator is the district's education spending plus excess spending, per equalized pupil, for the school year; and the denominator is the base education amount for the school year, as defined in 16 V.S.A. §4001.

(14) "Domicile" means the principal dwelling of a person who has established permanent residence in the state. Intention to establish permanent residence is a factual determination to be made in the first instance by the commissioner. No one factor is conclusive of whether a dwelling is a permanent residence; the commissioner may consider any relevant factors, including but not limited to the following: formal and informal statements of the declarant; the location of residences owned or leased by the declarant; where the declarant spends time; the declarant's place of employment and business connections; the location of items of significant value (either monetary or sentimental) to declarant; where the declarant's family lives; place of voter registration; place of issuance of automobile registration and driver's license; previous permanent residency of the declarant; and address listed on federal and state income tax returns filed by the declarant.

**History.** Added 1997, No. 60, § 45, eff. Jan. 1, 1998; amended 1997, No. 71 (Adj. Sess.), §§ 7, 7a, eff. Jan. 1, 1998; No. 71 (Adj. Sess.), § 58, eff. June 26, 1997; No. 156 (Adj. Sess.), § 34, eff. April 29, 1998; 1999, No. 49, §§ 7, 18, eff. June 2, 1999; 2001, No. 53, § 1, eff. June 12, 2001; 2001, No. 144 (Adj. Sess.), § 3, eff. June 21, 2002; 2003, No. 66, § 289b; No. 68, § 3, No. 68, § 28, eff. June 18, 2003; 2003, No. 76 (Adj. Sess.), §§ 13, 14, eff. Feb. 17, 2004; 2005, No. 38, §§ 16, 24; 2005, No. 94 (Adj. Sess.), § 8, eff. March 8, 2006; No. 182 (Adj. Sess.), § 10; 2007, No. 66, §§ 11, 25, eff. July 1, 2007; No. 82, § 21, eff. July 1, 2007; 2007, No. 92 (Adj. Sess.), § 24; 2009, No. 44, § 19, eff. May 21, 2009.

#### § 5402. Education property tax liability

(a) A statewide education tax is imposed on all nonresidential and homestead property at the following rates:

(1) the tax rate for nonresidential property shall be \$1.59 per \$100.00; and

(2) the tax rate for homestead property shall be \$1.10 multiplied by the district spending adjustment for the municipality, per \$100.00, of equalized education property value as most recently determined under section 5405 of this title. The homestead property tax rate for each municipality which is a member of a union or unified union school district shall be calculated as required under subsection (e) of this section.

(b) Calculation of education tax

(1) The commissioner of taxes shall determine for each municipality the education tax rates under subsection (a) of this section, divided by the municipality's most recent common level of appraisal. The legislative body in each municipality shall then bill each property taxpayer at the homestead or

nonresidential rate determined by the commissioner under this subdivision, multiplied by the education property tax grand list value of the property, properly classified as homestead or nonresidential property and without regard to any other tax classification of the property. Tax bills shall show the tax due and the calculation of the rate determined under subsection (a) of this section, divided by the municipality's most recent common level of appraisal, multiplied by the current grand list value of the property to be taxed.

(2) Taxes assessed under this section shall be assessed and collected in the same manner as taxes assessed under chapter 133 of this title with no tax classification other than as homestead or nonresidential property.

(3) If a district has not voted a budget by June 30, an interim homestead education tax shall be imposed at the base rate determined under subdivision (a)(2) of this section, divided by the municipality's most recent common level of appraisal, but without regard to any district spending adjustment. Within 30 days after a budget is adopted and the deadline for reconsideration has passed, the commissioner shall determine the municipality's homestead tax rate as required under subdivision (b)(1) of this subsection.

(c) The treasurer of each municipality shall by December 1 of the year in which the tax is levied and on June 1 of the following year pay to the state treasurer for deposit in the education fund one half of the municipality's statewide nonresidential tax and one half of the municipality's homestead education tax, as determined under subdivision (b)(1) of this section. The commissioner of education shall determine the municipality's net nonresidential education tax payment and its net homestead education tax payment to the state based on grand list information received by the commissioner no later than the March 15 prior to the June 1 net payment. Payment shall be accompanied by a return prescribed by the commissioner of education. The municipality may retain 0.225 of one percent of the total education tax collected, only upon timely remittance of net payment to the state treasurer. The municipality may also retain \$15.00 for each late property tax adjustment claim filed after April

15 and before September 2, as notified by the department, for the cost of issuing a new property tax bill.

(d) A municipality which has upon its grand list an operating electric generating plant subject to the tax under section 5402a of this chapter shall be subject to the nonresidential education property tax at three-quarters of the rate provided in subdivision (a)(1) of this section, as adjusted under section 5402b of this chapter; and shall be subject to the homestead education property tax at three-quarters of the base rate provided in subdivision (a)(2) of this section, as adjusted under section 5402b of this chapter, and multiplied by its district spending adjustment.

(e) The commissioner of taxes shall determine a homestead education tax rate for each municipality which is a member of a

union or unified union school district as follows:

(1) For a municipality which is a member of a unified union school district, use the base rate determined under subdivision (a)(2) of this section and a district spending adjustment based upon the education spending per equalized pupil of the unified union.

(2) For a municipality which is a member of a union school district:

(A) determine the municipal district homestead tax rate using the base rate determined under subdivision (a)(2) of this section and a district spending adjustment based on the education spending per total equalized pupil in the municipality who attends a school other than the union school;

(B) determine the union district homestead tax rate using the base rate determined under subdivision (a)(2) of this section and a district spending adjustment based on the education spending per equalized pupil of the union school district; and

(C) determine a combined homestead tax rate by calculating the weighted average of the rates determined under subdivisions (A) and (B) of this subdivision (2), with weighting based upon the ratio of union school equalized pupils from the member municipality to total equalized pupils of the member municipality; and the ratio of equalized pupils attending a school other than the union school to total equalized pupils of the member municipality. Total equalized pupils of the member municipality is based on the number of pupils who are legal residents of the municipality and attending school at public expense. If necessary, the commissioner may adopt a rule to clarify and facilitate implementation of this subsection.

**History.** Added 1997, No. 60, § 45, eff. Jan. 1, 1998; amended 1997, No. 71 (Adj. Sess.), § 8, eff. Jan. 1, 1998; No. 71 (Adj. Sess.), § 53; No. 71 (Adj. Sess.), § 73, eff. January 1, 1999; 1999, No. 1, § 60e, eff. March 31, 1999; No. 49, § 30, eff. June 2, 1999; 2001, No. 63, § 276, eff. June 16, 2001; 2001, No. 144 (Adj. Sess.), § 21, eff. June 21, 2002; 2003, No. 68, § 76, eff. June 18, 2003; No. 68, § 4, eff. for fiscal years 2005 and after; 2003, No. 76 (Adj. Sess.), § 6; 2003, No. 80 (Adj. Sess.), §§ 49a, 49c, eff. March 8, 2004; 2003, No. 130 (Adj. Sess.), § 13; 2005, No. 182 (Adj. Sess.), §§ 11, 12; 2007, No. 33, § 11, eff. May 18, 2007; No. 65, § 289; No. 82, § 12; 2007, No. 190 (Adj. Sess.), §§ 10, 11; 2009, No. 1 (Sp. Sess.), § H.23, eff. June 2, 2009.

#### § 5402a. Electric generating plant education property tax

(a) There is assessed for the fiscal year July through June upon any operating electric generating plant subject to the tax under chapter 213 of this title, an education property tax in accordance with the following table:

If megawatt hour production is: tax is:

Less than 2,300,000 megawatt hours \$1.465 million

2,300,000 to 3,800,000 megawatt hours \$1.465 million plus \$0.29 per megawatt hour over 2,300,000

3,800,001 to 4,200,000 megawatt hours \$1.9 million Over 4,200,000 megawatt hours \$1.9 million plus \$0.29 per megawatt hour over 4,200,000

(b) If an entity subject to this tax generates no electricity during the tax year due to termination or expiration of a necessary license or due to permanent cessation of operations, no tax shall be due for that year.

(c) The tax imposed by this section shall be paid to the commissioner of taxes by the person or corporation then owning or operating such electric generating plant, one-half on December 1 and one-half on June 1 each year, for deposit into the education fund. A person or entity failing to make returns or pay the tax imposed by this section within the time required shall be subject to and governed by the provisions of sections 3202, 3203, 5868, and 5873 of this title.

(d) For purposes of this section, "megawatt hour production" means the average of net production for sale in the three most recent preceding calendar years.

**History.** Added 1999, No. 49, § 89; amended 2003, No. 50, § 2, eff. for taxes due in 2005 and after.

#### § 5402b. Statewide education tax rate adjustments

(a) Annually, by December 1, the commissioner of taxes shall recommend to the general assembly, after consultation with the department of education, the secretary of administration and the joint fiscal office, the following adjustments in the statewide education tax rates under subdivisions 5402(a)(1) and (2) of this title:

(1) If there is a projected balance in the education fund budget stabilization reserve in excess of the five percent level authorized under 16 V.S.A. §4026, the commissioner shall recommend a reduction, for the following fiscal year only, in the statewide education tax rates which will retain the projected education fund budget stabilization reserve at the five percent maximum level authorized and raise at least 34 percent of projected education spending from the tax on nonresidential property; and

(2) If there is a projected balance in the education fund budget stabilization reserve of less than the three and one-half percent level required under 16 V.S.A. §4026, the commissioner shall recommend an increase, for the following fiscal year only, in the statewide education tax rates which will retain the projected education fund budget stabilization reserve at no less than the three and one-half percent minimum level authorized under 16 V.S.A. §4026, and raise at least 34 percent of projected education spending from the tax rate on nonresidential property.

(3) In any year following a year in which the nonresidential rate produced an amount of revenues insufficient to support 34

percent of education fund spending in the previous fiscal year, the commissioner shall determine and recommend an adjustment in the nonresidential rate sufficient to raise at least 34 percent of projected education spending from the tax rate on nonresidential property.

(4) If in any year in which the nonresidential rate is less than the statewide average homestead rate, the commissioner of taxes shall determine the factors contributing to the deviation in the proportionality of the nonresidential and homestead rates and make a recommendation for adjusting statewide education tax rates accordingly.

(b) If the commissioner makes a recommendation to the general assembly to adjust the education tax rates under section 5402 of this title, the commissioner shall also recommend a proportional adjustment to the applicable percentage base for homestead income based adjustments under section 6066 of this title, but the applicable percentage base shall not be adjusted below 1.8 percent.

**[Repealed effective 4/15/2011]** (c) The commissioner shall include in the recommendation specific information on the total amount of annual education property tax adjustments, the percentage of Vermont households that are provided an education property tax adjustment or renter rebate based on household income, and the dollar limitations that are used for each of the computations under this chapter. Based on the foregoing information, the commissioner shall make a recommendation regarding the dollar limitations provided for in this chapter and whether such limitations should be increased or decreased in order to maintain the same percentage level of households from the previous fiscal year that are eligible for an education property tax adjustment or renter rebate based on household income.

**History.** Added 2003, No. 68, § 5, eff. June 18, 2003; amended 2005, No. 185 (Adj. Sess.), § 10; 2009, No. 160 (Adj. Sess.), §§ 50, 51, eff. June 4, 2010.

#### **§ 5402c. Wind-powered electric generating facilities tax**

(a) A facility certified by the commissioner of public service as a facility which produces electrical energy for resale, generated solely from wind power, which has an installed capacity of at least five megawatts, which was placed in service after January 1, 2007, and which holds a valid certificate of public good issued under 30 V.S.A. §248, shall be assessed an alternative education property tax on its buildings and fixtures used directly and exclusively in the generation of electrical energy from wind power.

(b) The tax shall be imposed at a rate per kWh of electrical energy produced by the certified facility, as determined by the public service department for the six months ending April 30 and the six months ending October 31 each year. The rate of the tax shall be \$0.003.

(c) In no case shall the tax imposed for any six-month period be less than an amount equal to the rate per kWh imposed by this

subsection multiplied by the number of kWh that would be generated if the facility operated at 15 percent of the facility's average capacity factor.

(d) The tax imposed by this section shall be paid to the commissioner of taxes by the person or entity then owning or operating the certified facility by December 1 for the period ending October 31 and by June 1 for the period ending April 30 for deposit into the education fund. A person or entity failing to make returns or pay the tax imposed by this section within the time required shall be subject to and governed by the provisions of sections 3202 and 3203 and subchapters 8 and 9 of chapter 151 of this title.

(e) Unless buildings and fixtures are taxed under this section, they shall remain subject to taxation under section 5402 of this title. Buildings and fixtures subject to the education property tax under this section shall not be taken into account in determining the common level of appraisal for the municipality.

**History.** Added 2007, No. 92 (Adj. Sess.), § 25.

#### **§ 5403. Repealed**

**History.** Repealed. 1999, No. 1, § 60g(a), eff. Mar. 31, 1999.

#### **§ 5404. Determination of education property tax grand list**

(a) Municipalities shall determine the education property tax grand list by calculating one percent of the listed value of nonresidential and homestead real property as provided in this section. The listed value of all nonresidential and homestead real property in a municipality shall be its fair market value, its value established under a stabilization agreement described in section 5404a of this title, or the use value of property enrolled in a use value program under chapter 124 of this title. If a homestead is located on a parcel of greater than two acres, the entire parcel shall be appraised at fair market value; the housesite shall then be appraised as if it were situated on a separate parcel and the value of the housesite shall be subtracted from the value of the total parcel to determine the value of the remainder of the parcel.

(b) Annually, on or before August 15, the clerk of a municipality, or the supervisor of an unorganized town or gore, shall transmit to the director in an electronic or other format as prescribed by the director: education and municipal grand list data, including exemption information and grand list abstracts; tax rates; and the total amount of taxes assessed in the town or unorganized town or gore. The data transmitted shall identify each parcel by a parcel identification number assigned under a numbering system prescribed by the director. Municipalities may continue to use existing numbering systems in addition to, but not in substitution for, the parcel identification system prescribed by the director. If changes or additions to the grand list are made by the listers or other officials authorized to do so after such abstract has been so transmitted, such clerks shall forthwith certify the same to the director.

(c) If a town clerk or the legislative body fails without good cause, as determined by the commissioner, to transmit the grand list data or the tax data in a timely manner and in the format required by the director, the commissioner shall notify the secretary of transportation and the commissioner of education, who shall withhold all general and other aid payments owing to the municipality until the grand list information is filed as required by the director under subsection (b) of this section. Federal funds are exempt from withholding if the secretary or commissioner has an opinion of counsel that withholding would be a violation of federal law.

(d) Municipalities shall include, on all property tax bills, the parcel identification number prescribed in subsection (b) of this section.

**History.** Added 1997, No. 60, § 45, eff. Jan. 1, 1998; amended 2003, No. 68, § 29, eff. June 18, 2003; 2009, No. 160 (Adj. Sess.), § 5, eff. June 4, 2010.

**§ 5404a. Tax stabilization agreements; tax increment financing districts**

(a) Tax agreements and exemptions affecting the education property tax grand list. A tax agreement or exemption shall affect the education property tax grand list of the municipality in which the property subject to the agreement is located if the agreement or exemption is:

(1) a prior agreement, meaning that it was:

(A) a tax stabilization agreement for any purpose authorized under 24 V.S.A. §2741 or comparable municipal charter provisions entered into or proposed and voted by the municipality before July 1, 1997, or a property tax exemption adopted by vote pursuant to chapter 125 of Title 32 or comparable municipal charter provisions before July 1, 1997; or

(B) an agreement relating to property sold or transferred by the New England Power Company of its Connecticut River system and its facilities along the Deerfield River which was warned before September 1, 1997; or

(2) a tax stabilization agreement relating to industrial or commercial property entered into under 24 V.S.A. §2741, or comparable municipal charter provisions or an exemption for the purposes of economic development adopted by vote under sections 3834 (factories; quarries; mines), 3836 (private homes and dwellings), 3837 (airports), or 3838 (hotels) of this title or comparable municipal charter provisions after June 30, 1997 if subsequently approved by the Vermont economic progress council pursuant to this subsection and section 5930a of this title. An agreement or exemption may be approved by the Vermont economic progress council only if it has first been approved by the municipality in which the property is located with respect to the municipal tax liability of the property in that municipality. Any agreement or exemption approved by the Vermont economic progress council may not affect the education tax liability of the property in a greater proportion

than the agreement or exemption affects the municipal tax liability of the property. A municipality's approval of an agreement or exemption under this subsection may be made conditional upon approval of the agreement or exemption by the Vermont economic progress council. The legislative body of the municipality in which the property subject to the agreement or exemption is located or the business that is subject to the agreement or exemption may request the Vermont economic progress council to approve an agreement or exemption pursuant to section 5930a of this title. The council shall also report to the general assembly on the terms of the agreement or exemption, and the effect of the agreement or exemption on the education property tax grand list of the municipality and of the state. If so approved by the council, an agreement or exemption shall be effective to reduce the property tax liability of the municipality under this chapter beginning April 1 of the year following approval.

(3) an agreement relating to affordable housing, which may be submitted to the council for its approval under subdivision (2) of this subsection, or alternatively may be approved under this subdivision by the commissioner of taxes upon recommendation of the commissioner of housing and community affairs provided the agreement provides either for new construction housing projects or rehabilitated preexisting housing projects and secures federal financial participation which may include projects financed with federal low income housing tax credits.

(4) an exemption of property owned by a nonprofit volunteer fire, rescue or ambulance organization and used for the purposes of the organization, adopted, extended or renewed by vote of a municipality under chapter 125 of this title or comparable municipal charter provision after July 1, 1997.

(5) an exemption of property owned by a municipality situated in another municipality, which has been exempted from municipal property taxes by vote of the municipality in which the property is situated, and which is used for municipal forest lands, municipal water supply, or for other noncommercial municipal purposes. To be exempted under this subsection, the property must have been voted an exemption by the municipality before January 1, 1998, and such exemption may be extended or renewed thereafter by a similar vote of the municipality.

(6) an exemption of a portion of the value of a qualified rental unit parcel. An owner of a qualified rental unit parcel shall be entitled to an exemption on the education property tax grand list of 10 percent of the grand list value of the parcel, multiplied by the ratio of square footage of improvements used for or related to residential rental purposes to total square footage of all improvements, multiplied by the ratio of qualified rental units to total residential rental units on the parcel. "Qualified rental units" means residential rental units which are subject to rent restriction under provisions of state or federal law, but excluding units subject to rent restrictions under only one of the following programs: Section 8 moderate rehabilitation, Section 8 housing choice vouchers, or Section 236 or Section 515 rural

development rental housing. A municipality shall allow the percentage exemption under this subsection upon presentation by the taxpayer to the municipality,

by April 1, of a certificate of education grand list value exemption, obtained from the Vermont Housing Finance Agency (VHFA). VHFA shall issue a certificate of exemption upon presentation by the taxpayer of information which VHFA and the commissioner shall require. An exemption granted by a municipality under this subsection shall expire upon transfer of the building, upon expiration of the rent restriction, or after 10 years, whichever first occurs.

(b) An agreement affecting the education property tax grand list defined under subsection (a) of this section shall reduce the municipality's education property tax liability under this chapter for the duration of the agreement or exemption without extension or renewal, and for a maximum of 10 years, subject to the provisions of subsection 5930b(f) of this title. A municipality's property tax liability under this chapter shall be reduced by any difference between the amount of the education property taxes collected on the subject property and the amount of education property taxes that would have been collected on such property if its fair market value were taxed at the equalized nonresidential rate for the tax year.

(c) Tax agreements not affecting the education property tax grand list. A tax agreement shall not affect the education property tax grand list if it is:

(1) A tax exemption adopted by vote of a municipality after July 1, 1997 under chapter 125 of this title, or voted under a comparable municipal charter provision or other provision of law for property owned by nonprofit organizations used for public, pious or charitable purposes, other than economic development exemptions voted under sections 3834, 3836, 3837, or 3838 of this title and approved by the Vermont economic progress council, or exemptions of property of a nonprofit volunteer fire, rescue or ambulance organization adopted by vote of a municipality.

(2) A tax stabilization agreement relating to agricultural property, forest land, open space land or alternate energy generating plants entered into after July 1, 1997 by a municipality under 24 V.S.A. §2741.

(3) A tax stabilization agreement relating to commercial or industrial property entered into after July 1, 1997 by a municipality under 24 V.S.A. §2741, or a property tax exemption for purposes of economic development adopted by vote after July 1, 1997, which has not been approved by the Vermont economic progress council to affect the education grand list under subsection (a)(2) of this section and section 5930a of this title. In granting tax stabilization agreements for commercial or industrial property under 24 V.S.A. §2741, a municipality shall consider any applicable guidelines established for the approval of such stabilization agreements by the Vermont economic progress council established in section 5930a(c) of this title.

(4) Notwithstanding 10 V.S.A. §6306, a transfer of the development rights to real property under chapter 155 of Title 10 which is less than a permanent transfer of those rights, or is a lease of those rights for a fixed period, entered into on or after January 1, 1998, and a transfer or lease of such rights executed prior to January 1, 1998 upon the expiration of the period of the transfer or lease not to exceed five years.

(d) Tax agreements not affecting the education property tax grand list as defined in subsection (c) of this section shall not reduce the total education property tax liability of the municipality to the state under this chapter. However, such agreements shall reduce the education property tax liability of the owner of the property subject to the agreement to the extent provided in the agreement. A municipality shall assess a tax on its municipal grand list at a rate sufficient to raise an amount equal to the difference between the municipality's total education property tax liability to the state under this chapter and the amount collected from education property taxes in the municipality after reductions for all tax agreements in effect in the municipality as defined in subsection (c) of this section. Any such tax assessed under this section shall be identified on the tax bill of the municipality as a separate tax for municipally voted tax agreements.

(e) [Repealed.]

(f) A municipality that establishes a tax increment financing district under subchapter 5 of chapter 53 of Title 24 shall collect all property taxes on properties contained within the district and apply up to 75 percent of the tax increment as defined in 24 V.S.A. §1896 to repayment of financing of the improvements and related costs for up to 20 years pursuant to 24 V.S.A. §1894, if approved by the Vermont economic progress council pursuant to this section.

(g) Any utilization of tax increment approved under subsection (f) of this section shall be in addition to any other payments to the municipality under chapter 133 of Title 16. Tax increment utilizations approved pursuant to subsection (f) of this section shall affect the education property tax grand list and the municipal grand list of the municipality under this chapter beginning April 1 of the year following approval and shall remain available to the municipality for the full period authorized under 24 V.S.A. §1894, and restricted only to the extent that the real property development giving rise to the increased value to the grand list fails to occur within the authorized period.

(h) Criteria for approval. To approve utilization of incremental revenues pursuant to subsection (f) of this section, the Vermont economic progress council shall do all the following:

(1) Review each application to determine that the new real property development would not have occurred or would have occurred in a significantly different and less desirable manner but for the proposed utilization of the incremental tax revenues. A district created in a designated growth center under 24 V.S.A. §2793c shall be deemed to have complied with this

subdivision. The review shall take into account:

(A) The amount of additional time, if any, needed to complete the proposed development within the tax increment district and the amount of additional cost that might be incurred if the project were to proceed without education property tax increment financing.

(B) How the proposed development components and size would differ, if at all, without education property tax increment financing.

(C) The amount of additional revenue expected to be generated as a result of the proposed development; the percentage of that revenue that shall be paid to the education fund; the percentage that shall be paid to the municipality; and the percentage of the revenue paid to the municipality that shall be used to pay financing incurred for development of the tax increment financing district.

(2) Process requirements. Determine that each application meets all of the following four requirements:

(A) The municipality held public hearings and established a tax increment financing district in accordance with 24 V.S.A. §§1891 - 1900.

(B) The municipality has developed a tax increment financing district plan, including: a project description; a development financing plan; a pro forma projection of expected costs; a projection of revenues; a statement and demonstration that the project would not proceed without the allocation of a tax increment; evidence that the municipality is actively seeking or has obtained other sources of funding and investment; and a development schedule that includes a list, a cost estimate, and a schedule for public improvements and projected private development to occur as a result of the improvements.

(C) The municipality has approved or pledged the utilization of incremental municipal tax revenues for purposes of the district in the same proportion as the utilization of education property tax revenues approved by the Vermont economic progress council for the tax increment financing district.

(D) The proposed infrastructure improvements and the projected development or redevelopment are compatible with approved municipal and regional development plans, and the project has clear local and regional significance for employment, housing, and transportation improvements.

(3) Location criteria. Determine that each application meets one of the following criteria:

(A) The development or redevelopment is compact, high density, and located in or near existing industrial areas.

(B) The proposed district is within an approved growth center, designated downtown, designated village center, or new town center.

(C) The development will occur in an area that is economically distressed, which for the purposes of this subdivision means that the area has experienced patterns of increasing unemployment, a drop in average wages, or a decline in real property values.

(D) [Repealed.]

(4) Project criteria. Determine that the proposed development within a tax increment financing district will accomplish at least three of the following five criteria:

(A) The development within the tax increment financing district clearly requires substantial public investment over and above the normal municipal operating or bonded debt expenditures.

(B) The development includes new housing that is affordable to the majority of the residents living within the municipality and is developed at a higher density than at the time of application. "Affordable" has the same meaning as in 10 V.S.A. §6001(29).

(C) The project will affect the remediation and redevelopment of a brownfield located within the district. For the purposes of this section, "brownfield" means an area in which a hazardous substance, pollutant, or contaminant is or may be present, and that situation is likely to complicate the expansion, development, redevelopment, or reuse of the property.

(D) The development will include at least one entirely new business or business operation or expansion of an existing business within the district, and this business will provide new, quality, full-time jobs that meet or exceed the prevailing wage for the region as reported by the department of labor.

(E) The development will enhance transportation by creating improved traffic patterns and flow or creating or improving public transportation systems.

(i) The Vermont economic progress council and the department of taxes shall make an annual report to the senate committee on economic development, housing and general affairs, the senate committee on finance, the house committee on commerce and the house committee on ways and means of the general assembly on or before January 15. The report shall include, in regard to each existing tax increment financing district, the year of approval, the scope of the planned improvements and development, the equalized education grand list value of the district prior to the TIF approval, the original taxable property, the tax increment, and the annual amount of tax increments utilized.

(j) The municipality shall provide the council with all information related to the proposed financing necessary to assure its consistency with the plan approved pursuant to all other provisions of subsection (h) of this section. The council shall assure the viability and reasonableness of any proposed financing other than bonding and least-cost financing.

(k) The Vermont economic incentive review board may require

a third-party financial and technical analysis as part of the application of a municipality applying for approval of a tax increment financing district pursuant to this section. The applicant municipality shall pay a fee to cover the actual cost of the analysis to be deposited in a special fund which shall be managed pursuant to subchapter 5 of chapter 7 of this title and be available to the board to pay the actual cost of the analysis.

(l) The state auditor of accounts shall review and audit all active tax increment financing districts every three years.

**History.** Added 1997, No. 60, § 45, eff. Jan. 1, 1998; amended 1997, No. 71 (Adj. Sess.), § 47, eff. March 11, 1998; 2003, No. 76 (Adj. Sess.), § 7, eff. Jan. 1, 2004; 2003, No. 163 (Adj. Sess.), § 33, eff. Jan. 1, 2004; 2005, No. 184 (Adj. Sess.), § 2h; 2007, No. 81, §§ 12, 13, eff. June 11, 2007; 2007, No. 190 (Adj. Sess.), §§ 61, 63, 64; 2009, No. 47, § 6, eff. May 28, 2009.

**§ 5404b. Hydro-electric property; conservation easements; transfers**

Notwithstanding any other provision of law, including the provisions of subdivisions 3481(1) and 3802(1) of this title:

(1) any real property subject to conservation easements granted pursuant to the terms of any agreement executed on or after January 1, 1997 between companies owning real property used for hydro-electric generation in this state and the state of Vermont shall continue to be assessed and property taxes collected as if such property were not subject to such easements;

(2) any real property purchased by the state pursuant to the terms of any agreement executed on or after January 1, 1997 between companies owning real property used for hydro-electric generation in this state and the state of Vermont, which property continues to be owned by the state, or by some successor owner which would otherwise be exempt from property taxes, shall continue to be assessed and property taxes collected as if such property were not so purchased by the state; and

(3) any real property and fixtures used for hydro-electric generation and purchased by the town of Rockingham on or after January 1, 2002, which property and fixtures continue to be owned by the town of Rockingham and used for purposes of hydro-electric generation, shall continue to be listed on the education property tax grand list and assessed as if such property were not so purchased by the town of Rockingham. The town shall, in lieu of property taxes, pay to any governmental body authorized to levy property taxes the amount which would be assessable as property taxes on the real and tangible personal property if that property were the property of a utility. These payments shall be due, and bear interest if unpaid, as in the case of taxes on the property of a utility. For purposes of these payments in lieu of taxes, the assessors of the taxing authority shall make a valuation and assessment of the property, and determine the tax that would be assessable if the property were owned by a utility. Payments in

lieu of taxes made under this chapter shall be treated in the same manner as taxes for the purposes of all procedural and substantive provisions of law, including appeals, now and hereinafter in effect applicable to assessment and taxation of real and personal property, collection and abatement of these taxes, and the raising of public revenues.

**History.** Added 1997, No. 60, § 45, eff. Jan. 1, 1998; amended 2003, No. 121 (Adj. Sess.), § 100, eff. June 8, 2004.

**§ 5405. Determination of equalized education property tax grand list and coefficient of dispersion**

(a) Annually, on or before April 1, the commissioner shall determine the equalized education property tax grand list and coefficient of dispersion for each municipality in the state; provided, however, that for purposes of equalizing grand lists pursuant to this section, the equalized education property tax grand list of a municipality that establishes a tax increment financing district shall include the fair market value of the property in the district and not the original taxable value of the property.

(b) The sum of all municipal equalized education property tax grand lists shall be the equalized education property tax grand list for the state.

(c) In determining the fair market value of property which is required to be listed at fair market value, the commissioner shall take into consideration those factors required by section 3481 of this title. The commissioner shall value property as of April 1 preceding the determination, and shall take account of all homestead declaration information available before October 1 each year.

(d) Any determination of fair market value made by the commissioner under this section shall be based upon such methods, as in the judgment of the commissioner, and in view of the resources available for that purpose, shall be appropriate to support that determination. If the common level of appraisal is calculated using the weighted mean of ratios, any outlier shall be carefully reviewed and deleted if it will significantly affect the weighted mean, particularly if the outlier is a high-value property.

(e) Individual appraisals performed by the division of property valuation and review may be used to supplement actual sales when necessary to obtain a representative sample.

(f) Within the limits of the resources available for that purpose, the commissioner may employ such individuals, whether on a permanent, temporary, or contractual basis, as shall be necessary, in the judgment of the commissioner, to aid in the performance of duties under this section. The commissioner shall pay each municipality the sum of \$1.00 per grand list parcel in the municipality, for services provided to the commissioner in connection with his or her duties under this section. Such payment shall be made from the equalization and reappraisal account within the education fund.

(g) [Repealed.]

**History.** Added 1997, No. 60, § 45, eff. Jan. 1, 1998; amended 1999, No. 49, §§ 19, 49, eff. June 2, 1999; 2003, No. 68, §§ 41, 85, eff. June 18, 2003; 2003 No. 68, § 85, eff. for fiscal year 2005; 2003, No. 76 (Adj. Sess.), § 1, eff. Feb. 17, 2004; 2003, No. 76 (Adj. Sess.), § 28, eff. Jan. 1, 2004; 2009, No. 160 (Adj. Sess.), § 14, eff. June 4, 2010.

#### **§ 5406. Notice of fair market value and coefficient of dispersion**

(a) Not later than January 1 of each year, the director of the division of property valuation and review shall notify the town clerk and chair of the board of listers of each municipality of the equalized education property value and the coefficient of dispersion of that town for the prior year, and of the manner by which the equalized education property value and coefficient of dispersion were determined by the director.

(b) Not later than April 1 of each year, the director shall certify to the commissioner of education the equalized education property value and coefficient of dispersion for the prior year of every municipality of the state.

(c) If the director of property valuation and review certifies that a municipality has completed a townwide reappraisal, the common level of appraisal for that municipality shall be equal to its new grand list value divided by its most recent equalized grand list value, for purposes of determining education property tax rates.

**History.** Added 1997, No. 60, § 45, eff. Jan. 1, 1998; amended 1997, No. 71 (Adj. Sess.), § 10, eff. Jan. 1, 1998; 2003, No. 76 (Adj. Sess.), § 9, eff. Feb. 17, 2004; 2005, No. 75, § 12.

#### **§ 5407. Valuation appeal board**

(a) There is established a valuation appeal board to consist of five members. The members shall be appointed by the governor with the advice and consent of the senate, for three-year terms beginning February 1 of the year in which the appointment is made, except that one of the initial appointments shall be for a term of one year and two of the initial appointments shall be for a term of two years. A vacancy in the board shall be filled in the same manner as the original appointment for the unexpired portion of the term vacated.

(b) Persons serving on the appeal board shall be knowledgeable and experienced in at least one of the following fields: agriculture, business management, law, taxation, appraisal and valuation techniques, municipal affairs, or related areas. No member of the valuation appeal board shall be otherwise employed by the state or be a lister. In making appointments, attention shall be given to the desirability of providing geographical balance to the degree reasonably practical.

(c) A chair shall be designated biennially by the governor from among the members of the board and any vacancy in the office of the chair shall be filled by designation of the governor.

(d) Members of the valuation appeal board shall receive a sum not to exceed \$80.00 per diem for each day of official duties of the board together with reimbursement of reasonable expenses incurred in the performance of their duties, as determined by the director of property valuation and review.

(e) The board shall be attached for administrative purposes to the division of property valuation and review of the department of taxes of the agency of administration.

**History.** Added 1997, No. 60, § 45, eff. Jan. 1, 1998; amended 1999, No. 49, § 50.

#### **§ 5408. Petition for redetermination**

(a) Not later than 30 days after the receipt by its clerk of a notice under section 5406 of this title, a municipality may petition the director of the division of property valuation and review for a redetermination of the municipality's equalized education property value and coefficient of dispersion. Such petition shall be in writing and shall be signed by the chair of the legislative body of the municipality or its designee.

(b) Upon receipt of a petition for redetermination under subsection (a) of this section, the director shall, after written notice, grant a hearing upon the petition to the aggrieved town. The director shall thereafter notify the town and the commissioner of education of his or her redetermination of the equalized education property value and coefficient of dispersion of the town or district, in the manner provided for notices of original determinations under section 5406 of this title.

(c) A municipality, within 30 days of the director's redetermination, may appeal the redetermination to the valuation appeal board. The board shall notify the appellee of the filing of the appeal. The appeal shall be heard de novo in the manner provided by chapter 25 of Title 3 for the hearing of contested cases.

(d) A municipality or the division of property valuation and review may appeal from a decision of the valuation appeal board to the superior court of the county in which the municipality is located. The superior court shall hear the matter de novo in the manner provided by Rule 74 of the Vermont Rules of Civil Procedure. An appeal from the decision of the superior court shall be to the supreme court under the Vermont Rules of Appellate Procedure.

**History.** Added 1997, No. 60, § 45, eff. Jan. 1, 1998; amended 1999, No. 49, § 52, eff. June 2, 1999.

#### **§ 5409. Duties of municipalities and administration**

The following shall apply with regard to the statewide education tax imposed under this chapter:

(1) Late payments of the tax by a municipality to the state shall be assessed interest at a per diem rate of eight percent per annum of the amount due. If a payment is more than 90 days

overdue, any state funds due the municipality shall be withheld.

(2) If by August 1 a municipality has failed to issue notices of assessment of the statewide education tax; or if the municipality fails for more than 90 days after the due date for any installment payment to enforce the tax in the municipality; then the commissioner of taxes shall either issue notices of assessment or collect the tax or both, or bring appropriate court action to require the municipal officials to issue notices and collect the tax, as the commissioner deems necessary.

(3) In any case of administration under subdivision (2) of this section by the commissioner of taxes of education property tax:

(A) Sections 5868, 5869, 5873, 5875, 5881 - 5887, and 5891-5895 of this title, as amended, shall apply in the same manner as to income tax.

(B) Persons aggrieved by decisions of the listers may appeal in the manner provided for property tax appeals in chapter 131 of this title; and the commissioner of taxes shall have all the powers described in chapter 133 of this title.

(C) The commissioner may abate in whole or in part the statewide education taxes of a taxpayer who has been granted an abatement of municipal taxes under section 1535 of Title 24.

(4) [Deleted.]

(5) In case of insufficient property tax payment by a taxpayer to a municipality, payments shall be allocated first to municipal property tax, and next to statewide education tax. In case of insufficient payment by a taxpayer to the department of taxes, payments shall be allocated first to liabilities other than education taxes, and next to education tax.

(6) In case of overpayment by a taxpayer who has an income tax liability under chapter 151 of this title and a homestead property tax liability, a refund of the overpayment, after accounting for any benefit amount allowed under chapter 154 of this title, shall be deemed to be a refund of income tax for purposes of debt setoff under subchapter 12 of chapter 151 of this title.

(7) Notwithstanding section 435 of this title, the commissioner shall deposit the revenue from taxes imposed under this chapter in the education fund.

(8) A municipality's liability to the state for education taxes shall not be reduced by any early payment property tax discount or similar discount offered by the municipality.

**History.** Added 1997, No. 60, § 45, eff. Jan. 1, 1998; amended 1997, No. 71 (Adj. Sess.), § 11, eff. Jan. 1, 1998; No. 71 (Adj. Sess.), § 75, eff. January 1, 1999; No. 156 (Adj. Sess.), § 50, eff. April 29, 1998; 2003, No. 68, § 21, eff. June 18, 2003.

#### § 5410. Declaration of homestead

(a) A homestead owner shall declare ownership of a homestead

for purposes of education property tax.

(b)(1) Annually on or before the due date for filing the Vermont income tax return, without extension, each homestead owner shall, on a form prescribed by the commissioner, which shall be verified under the pains and penalties of perjury, declare his or her homestead, if any, as of, or expected to be as of, April 1 of the year in which the declaration is made for property that was acquired by the declarant or was made the declarant's homestead after April 1 of the previous year. The declaration of homestead shall remain in effect until the earlier of:

(A) the transfer of title of all or any portion of the homestead; or

(B) that time that the property or any portion of the property ceases to qualify as a homestead.

(2) Within 30 days of the transfer of title of all or any portion of the homestead, or upon any portion of the property ceasing to be a homestead, the declarant shall provide notice to the commissioner on a form to be prescribed by the commissioner.

Subsection (c) shall apply to declarations filed in 2010 and after.

(c) In the event that an unsigned but otherwise completed homestead declaration is filed with the declarant's signed state income tax return, the commissioner may treat such declaration as signed by the declarant.

(d) The commissioner shall provide a list of homesteads in each town to the town listers by May 15. The listers shall notify the commissioner by June 1 of any residences on the commissioner's list which do not qualify as homesteads. The listers shall separately identify homesteads in the grand list.

(e) The commissioner shall adopt rules governing the eligibility requirements for declaring a homestead.

(f) [Repealed.]

(g) If the property identified in a declaration under subsection (b) of this section is not the taxpayer's homestead, or if the owner of a homestead fails to declare a homestead as required under this section, or fails to file a notice of transfer or change in qualification pursuant to subdivisions (b)(1)(A) and (B) of this section, the commissioner shall notify the municipality and the municipality shall issue a corrected tax bill that includes a penalty in an amount equal to three percent of the education tax on the property if the municipality's nonresidential tax rate is higher than the municipality's homestead tax rate for the tax year to which the declaration or failure pertains, or in any other case shall assess the taxpayer a penalty in an amount equal to eight percent of the education tax on the property. If the commissioner determines that the declaration or failure to declare was with fraudulent intent, then the municipality shall assess the taxpayer a penalty in an amount equal to 100 percent of the education tax on the property; plus any interest

and late-payment fee or commission which may be due. Any penalty imposed under this section and any additional property tax interest and late-payment fee or commission shall be assessed and collected by the municipality in the same manner as a property tax under chapter 133 of this title.

(h) The filing of a new or corrected declaration or rescission of an erroneous declaration, on or before September 1 of the property tax year, that is not reflected in the first education fund payment under 16 V.S.A. §4028 for that fiscal year or in a municipality's first payment to the education fund under subsection 5402(c) of this title for that fiscal year, shall be reflected in the final net payment to or from the education fund for that fiscal year. The municipality may retain 0.225 of one percent of the tax collected. Any reduction in tax paid to a municipality due to a new, revised, or rescinded declaration shall be paid by the municipality to the taxpayer no later than May 15 of the fiscal year. No later than June 1, each municipality shall provide to the state treasurer a list of taxpayers who filed late or corrected declarations or rescinded declarations, the amount of the change in education tax, and the amount of any interest and penalty billed the taxpayer.

(i) An owner filing a new or corrected declaration, or rescinding an erroneous declaration, after September 1 shall not be entitled to a refund resulting from the correct property classification; and any additional property tax and interest which would result from the correct classification shall not be assessed as tax and interest, but shall instead constitute an additional penalty, to be assessed and collected in the same manner as penalties under subsection (g) of this section. Any change in property classification under this subsection shall not be entered on the grand list.

(j) A taxpayer may appeal a determination of domicile for purposes of a homestead declaration or an assessment of fraud penalty under this section to the commissioner, in the same manner as an appeal under chapter 151 of this title. A taxpayer may appeal an assessment of any other penalty under this section to the listers within 14 days after the date of mailing of notice of the penalty, and from the listers to the board of civil authority and thereafter to the courts, in the same manner as an appraisal appeal under chapter 131 of this title. The legislative body of a municipality shall have authority in cases of hardship to abate all or any portion of a penalty appealable to the listers under this section and any tax, penalty, and interest arising out of a corrected property classification under this section; and shall state in detail in writing the reasons for its grant or denial of the requested abatement. The legislative body may delegate this abatement authority to the board of civil authority or the board of abatement for the municipality. Requests for abatement shall be made to the municipal treasurer or other person designated to collect current taxes, and that person shall forward all requests, with his or her recommendation, to the body authorized to grant or deny abatement.

(k) A municipality may retain any penalties and interest assessed and collected in accord with this section.

(l) "Hardship" under this section means an owner's inability to pay as certified by the commissioner of taxes in his or her discretion; or means an owner's filing an incorrect, or failing to file a correct, homestead declaration due to one or more of the following:

- (1) Full-time active military duty of the declarant outside the state.
- (2) Serious illness or disability of the declarant.
- (3) Serious illness, disability, or death of an immediate family member of the declarant.
- (4) Fire, flood, or other disaster.

**History.** Added 1997, No. 60, § 45, eff. Jan. 1, 1999; amended 1997, No. 71 (Adj. Sess.), §§ 12, 13, 14, eff. Jan. 1, 1998; No. 71 (Adj. Sess.), § 76, eff. January 1, 1999; 1999, No. 1, § 60g(b); No. 49, §§ 31, 53, eff. June 2, 1999.; 2003, No. 68, § 6, eff. July 1, 2004; 2003, No. 76 (Adj. Sess.), §§ 2, 20, eff. Feb. 17, 2004; 2003, No. 107 (Adj. Sess.), § 18a; 2005, No. 38, § 6, eff. Jan. 1, 2006; No. 38, § 17; 2005, No. 185 (Adj. Sess.), § 6, eff. Jan. 1, 2006; 2007, No. 190 (Adj. Sess.), § 12; 2009, No. 1 (Sp. Sess.), § H.24, eff. June 2, 2009; 2009, No. 160 (Adj. Sess.), § 47, eff. June 4, 2010.

#### § 5411. Rules

The commissioner of taxes and the director of property valuation and review may each adopt formal or informal rules in order to carry out the provisions of this chapter.

**History.** Added 1997, No. 60, § 45, eff. Jan. 1, 1998.

#### § 5412. Reduction of listed value and recalculation of education tax liability

(a)(1) If a listed value is reduced as the result of an appeal or court action, and if the municipality files a written request with the commissioner within 30 days after the date of the determination, entry of the final order, or settlement agreement if the commissioner determines that the settlement value is the fair market value of the parcel, the commissioner shall recalculate the municipality's education property tax liability for the year at issue, in accord with the reduced valuation, provided that:

(A) the reduction in valuation is the result of an appeal under chapter 131 of this title to the director of property valuation and review or to a court, with no further appeal available with regard to that valuation, or any judicial decision with no further right of appeal, or a settlement of either an appeal or court action if the commissioner determines that the settlement value is the fair market value of the parcel;

(B) the municipality notified the commissioner of the appeal or court action, in writing, within ten days after notice of the appeal was filed under section 4461 of this title or after the complaint was served; and

(C) as a result of the valuation reduction of the parcel, the value of the municipality's grand list is reduced at least one percent.

(2) The municipality's request shall include a copy of the agreement, determination or final order, and any other documentation necessary to show the existence of these conditions.

(b) To the extent that the municipality has paid that liability, the commissioner shall allow a credit for any reduction in education tax liability against the next ensuing year's education tax liability or, at the request of the municipality, may refund to the municipality an amount equal to the reduction in education tax liability.

(c) If a listed value is increased as the result of an appeal under chapter 131 of this title or court action, whether adjudicated or settled and the commissioner determines that the settlement value is the fair market value of the parcel, with no further appeal available with regard to that valuation, the commissioner shall recalculate the municipality's education property tax for each year at issue, in accord with the increased valuation, and shall assess the municipality for the additional tax at the same time the commissioner assesses the municipality's education tax liability for the next ensuing year, unless the resulting assessment would be less than \$300.00. Payment under this section shall be due with the municipality's education tax liability for the next ensuing year.

(d) Recalculation of education property tax under this section shall have no effect other than to reimburse or assess a municipality for education property tax changes which result from property revaluation.

**History.** Added 2001, No. 63, § 279, eff. June 16, 2001; amended 2007, No. 65, § 393, eff. June 4, 2007; 2007, No. 190 (Adj. Sess.), § 13, eff. June 6, 2008.

## Vermont Statutes

### Title 32. Taxation and Finance

#### Chapter 124. AGRICULTURAL AND FOREST LANDS

##### § 3751. Statement of purpose

The purpose of this subchapter is to encourage and assist the maintenance of Vermont's productive agricultural and forest land; to encourage and assist in their conservation and preservation for future productive use and for the protection of natural ecological systems; to prevent the accelerated conversion of these lands to more intensive use by the pressure of property taxation at values incompatible with the productive capacity of the land; to achieve more equitable taxation for undeveloped lands; to encourage and assist in the preservation and enhancement of Vermont's scenic natural resources; and to enable the citizens of Vermont to plan its orderly growth in the face of increasing development pressures in the interests of the public health, safety and welfare.

**History.** Added 1977, No. 236 (Adj. Sess.), § 1.

##### § 3752. Definitions

For the purposes of this subchapter:

(1) "Agricultural land" means any land, exclusive of any housesite, in active use to grow hay or cultivated crops, pasture livestock or to cultivate trees bearing edible fruit or produce an annual maple product, and which is 25 acres or more in size except as provided below. There shall be a presumption that the land is used for agricultural purposes if:

(A) it is owned by a farmer and is part of the overall farm unit; or

(B) it is used by a farmer as part of his or her farming operation under written lease for at least three years; or

(C) it has produced an annual gross income from the sale of farm crops in one of two, or three of the five, calendar years preceding of at least:

(i) \$2,000.00 for parcels of up to 25 acres; and

(ii) \$75.00 per acre for each acre over 25, with the total income required not to exceed \$5,000.00;

(iii) exceptions to these income requirements may be made in cases of orchard lands planted to fruit producing trees, bushes or vines which are not yet of bearing age. For the purposes of this section, the term "farm crops" also includes animal fiber, cider, wine and cheese produced on the enrolled land or on a housesite adjoining the enrolled land from agricultural products grown on the

enrolled land.

(2) "Assessing officials" means the listers or other assessing authority of the municipality or the state of Vermont.

(3) "Board" means the current use advisory board established in section 3753 of this chapter.

(4) "Commissioner" means the commissioner of the department of taxes.

(5) "Development" means, for the purposes of determining whether a land use change tax is to be assessed under section 3757 of this chapter, the construction of any building, road or other structure, or any mining, excavation or landfill activity. "Development" also means the subdivision of a parcel of land into two or more parcels, regardless of whether a change in use actually occurs, where one or more of the resulting parcels contains less than 25 acres each; but if subdivision is solely the result of a transfer to one or more of a spouse, parent, grandparent, child, grandchild, niece, nephew, or sibling of the transferor, or to the surviving spouse of any of the foregoing, then "development" shall not apply to any portion of the newly-created parcel or parcels which qualifies for enrollment and for which, within 30 days following the transfer, each transferee or transferor applies for reenrollment in the use value appraisal program. "Development" also means the cutting of timber on property appraised under this chapter at use value in a manner contrary to a forest or conservation management plan as provided for in subsection 3755(b) of this title, or contrary to the minimum acceptable standards for forest management; or a change in the parcel or use of the parcel in violation of the conservation management standards established by the commissioner of forests, parks and recreation. The term "development" shall not include the construction, reconstruction, structural alteration, relocation, or enlargement of any building, road or other structure for farming, logging, forestry, or conservation purposes, but shall include the subsequent commencement of a use of that building, road or structure for other than farming, logging or forestry purposes.

(6) "Director" means the director of the division of property valuation and review created by 3 V.S.A. §2289.

(7) "Farmer" means a person:

(A) who earns at least one-half of the farmer's annual gross income from the business of farming as that term is defined in Regulation 1.175-3 issued under the Internal Revenue Code of 1986; or

(B)(i) who produces farm crops that are processed in a farm facility situated on land enrolled by the farmer in a use value appraisal program or on a housesite adjoining the enrolled land;

(ii) whose gross income from the sale of the processed farm products pursuant to subdivision (i) of this subdivision (B), when added to other gross income from the business of farming as used in subdivision (A) of this subdivision (7), equals at least one-half of the farmer's annual gross income; and

(iii) who produces on the farm a minimum of 75 percent of the farm crops processed in the farm facility;

(C) The agency of agriculture, food and markets shall assist the director in making determinations of eligibility pursuant to subdivision (B) of this subdivision (7).

(8) "Housesite" means the two acres of land surrounding any house, mobile home or dwelling.

(9) "Managed forest land" means:

(A) any land, exclusive of any house site, which is at least 25 acres in size and which is under active long-term forest management for the purpose of growing and harvesting repeated forest crops in accordance with minimum acceptable standards for forest management; or

(B) any land, exclusive of any house site, which is:

(i) certified under 10 V.S.A. §6306(b);

(ii) is owned by an organization that was certified by the commissioner of taxes as a qualified organization as defined in 10 V.S.A. §6301a and for at least five years preceding its certification was determined by the internal revenue service to qualify as a Section 501(c)(3) organization which is not a private foundation as defined in Section 509(a) of the Internal Revenue Code; and

(iii) is under active conservation management in accord with standards established by the commissioner of forests, parks and recreation.

(10) "Owner" means the person who is the owner of record of any land. When enrolled land is mortgaged, the mortgagor shall be deemed the owner of the land for the purposes of this subchapter, until the mortgagee takes possession, either by voluntary act of the mortgagor or foreclosure, after which the mortgagee shall be deemed the owner.

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

(12) "Use value appraisal" means, with respect to land, the price per acre which the land would command if it were required to remain henceforth in agriculture or forest use, as determined in accordance with the terms and provisions of this subchapter. With respect to farm buildings, "use value appraisal" means zero percent of fair market value. The director shall annually provide the assessing officials with a list of farm sales, including the

town in which the farm is located, the acreage, sales price, and date of sale.

(13) "Minimum acceptable standards for forest management" refer to certain standards established by the commissioner of the department of forests, parks and recreation.

(14) "Farm buildings" means all farm buildings and other farm improvements which are actively used by a farmer as part of a farming operation, are owned by a farmer or leased to a farmer under a written lease for a term of three years or more, and are situated on land that is enrolled in a use value appraisal program or on a housesite adjoining enrolled land. "Farm buildings" shall include up to \$100,000.00 of the value of a farm facility processing farm crops, a minimum of 75 percent of which are produced on the farm and shall not include any dwelling other than a dwelling in use during the preceding tax year exclusively to house one or more farm employees, as defined in section 4469 of Title 9, and their families, as a nonmonetary benefit of the farm employment. This subdivision shall not affect the application of the definition of "farming" in 10 V.S.A. §6001(22) or the definition of "farm structure" in 24 V.S.A. §4413(d)(1).

(15) "Active use" of agricultural land includes that portion of otherwise eligible land that is enrolled in a conservation reserve enhancement program for agricultural lands through a contract with the state or federal government.

**History.** Added 1977, No. 236 (Adj. Sess.), § 1; 1981, No. 14, eff. Jan. 1, 1981; amended 1981, No. 14, eff. Jan. 1, 1981; 1983, No. 220 (Adj. Sess.), §§ 1, 2; 1987, No. 57, § 1, eff. May 16, 1987; 1987, No. 130 (Adj. Sess.), § 1; 1995, No. 29, § 39, eff. April 14, 1995; 1995, No. 178 (Adj. Sess.), § 286; 1997, No. 60, § 60, eff. Jan. 1, 1998; No. 60, § 68d; 1999, No. 49, § 86, eff. June 2, 1999; 2001, No. 140 (Adj. Sess.), §§ 31, 41, eff. June 21, 2002; 2003, No. 66, §§ 286, 286a; 2003, No. 149 (Adj. Sess.), § 11, eff. June 3, 2004; 2005, No. 76, §§ 1-3; 2007, No. 205 (Adj. Sess.), § 9, eff. June 10, 2008; 2009, No. 160 (Adj. Sess.), § 12, eff. June 4, 2010.

**§ 3753. Current use advisory board; members; chair**

(a) There is hereby established a current use advisory board.

(b) The membership of the board shall consist of:

(1) The following persons or their designees:

(A) Commissioner of the department of taxes;

(B) Director of the division of property valuation and review;

(C) Secretary of the agency of agriculture, food and markets;

(D) Commissioner of the department of forests, parks and recreation;

(E) Dean of the college of natural resources, agriculture and life sciences of the University of Vermont.

(F) [Repealed.]

(2) Eight additional members to be appointed by the governor with the advice and consent of the senate. Two of these members shall represent the private agricultural sector; two shall represent the private forestry sector; one shall be experienced in agricultural and forestry property appraisal and valuation techniques; one shall be a representative of local government; one shall be a selectboard member; and one shall be a lister. Fifty-one percent or more of the board membership shall be persons who do not own enrolled land, and have no spouse, child or parent who owns enrolled land. These members shall be appointed for three-year terms, beginning February first of the year in which the appointment is made, except that the initial appointment of three of the members shall be for a two-year term. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term vacated.

(c) A chair shall be designated biennially by the governor from among the members of the board and any vacancy in the office of chair shall be filled by designation of the governor.

(d) Members of the board who are not state employees shall be paid \$50.00 a day, each, for each day that they are actually engaged in the work of the board. All members shall be paid their actual expenses incurred as a result of that work.

(e) The board shall be attached for administrative purposes to the division of property valuation and review of the department of taxes of the agency of administration.

**History.** Added 1977, No. 236 (Adj. Sess.), § 1; amended 1985, No. 74, § 297; 1987, No. 57, § 2, eff. May 16, 1987; 1987, No. 130 (Adj. Sess.), § 2; 1989, No. 256 (Adj. Sess.), § 10(a), eff. Jan. 1, 1991; 1997, No. 60, § 67, eff. June 26, 1997; 2003, No. 42, § 2, eff. May 27, 2003.

#### § 3754. Powers and duties of board

(a) The board shall meet at least annually, prior to February 1, to review all past current use land values for agricultural land and managed forest land recommended by past boards, to review the criteria for said lands previously established and to establish new criteria and values as legislation and land management practices may indicate, to establish a schedule of criteria and values to be recommended for the current tax year, and to recommend such changes and improvement in the

administration of this subchapter as experience and public reaction may recommend. The board's criteria and recommended values may reflect the class, type, grade and location of the land, together with its productive capacity and income producing capability of agricultural and forest land.

(b) Annually in August the board shall hold a public hearing and such other hearings as they deem necessary to receive public testimony on the criteria and values for use value appraisals in the coming tax year and on the administration of this subchapter.

(c) Prior to February 15 each year, the board shall submit to the director its recommended schedule of criteria and values for use value appraisals for the current tax year. The director shall then distribute the valuations to all municipalities, towns and gores, and the assessing officials shall appraise qualifying agricultural and managed forest land at these use values.

(d) The board may adopt rules under the authority granted to agencies by sections 801 through 808 of Title 3 to interpret and carry out the provisions of this subchapter.

(e) A member of the board shall not vote on any issue on which he or she, or when applicable his or her agency, has a conflict of interest.

**History.** Added 1977, No. 236 (Adj. Sess.), § 1; amended 1983, No. 220 (Adj. Sess.), §§ 3, 14; 1987, No. 57, § 3, eff. May 16, 1987.

#### § 3755. Eligibility for use value appraisals

(a) Except as modified by subsection (b) of this section, any agricultural land, managed forest land and farm buildings which meet the criteria contained in this subchapter and in the regulations adopted by the board shall be eligible for use value appraisal.

(b) Managed forest land shall be eligible for use value appraisal under this subchapter only if:

(1) the land is subject to a forest management plan, or subject to a conservation management plan in the case of lands certified under 10 V.S.A. §6306(b), signed by the owner of a tract which complies with subdivision 3752(9) of this title, filed with and approved by the department of forests, parks and recreation by October 1, which provides for continued conservation management or forest crop production on the tract for at least ten years. During a period of use value appraisal under this subchapter, a conservation or forest management plan for at least ten years, including the 12-month period beginning April 1 of the year for which use value appraisal is sought, signed by the owner, shall be on file with the department in such a manner and in such form as is prescribed by the department. Upon the expiration of a ten year plan, the owner shall file a new plan for at least

the next succeeding ten years to remain in the program.

(A) The department may approve a forest management plan which provides for the maintenance and enhancement of the tract's wildlife habitat where clearly consistent with timber production and with minimum acceptable standards for forest management as established by the commissioner of forests, parks and recreation.

(B) The department, upon giving due consideration to resource inventories submitted by applicants, may approve a conservation management plan, consistent with conservation management standards, so as to include appropriate provisions designed to preserve: areas with special ecological values; fragile areas; rare or endangered species; significant habitat for wildlife; significant wetlands; outstanding resource waters; rare and irreplaceable natural areas; areas with significant historical value; public water supply protection areas; areas that provide public access to public waters; open or natural areas located near population centers, or historically frequented by the public. In approving a plan, the department shall give due consideration to: the need for restricted public access where required to protect the fragile nature of the resource; public accessibility where restricted access is not required; facilitation of appropriate, traditional public usage; opportunities for traditional or expanded use for educational purposes and for research.

(2) a management report of whatever activity has occurred, signed by the owner, has been filed with the department of forests, parks and recreation by February 1 of the year following the year when the management activity occurred.

(3) there has not been filed with the director an adverse inspection report by the department stating that the management of the tract is contrary to the forest or conservation management plan, or contrary to the minimum acceptable standards for forest or conservation management. The management activity report shall be on a form prescribed by the commissioner of forests, parks and recreation in consultation with the commissioner of taxes and shall include a detachable section signed by all the owners that shall contain the federal tax identification numbers of all the owners. The section containing federal tax identification numbers shall not be made available to the general public, but shall be forwarded to the commissioner of taxes within 30 days after receipt and used for tax administration purposes. If any owner shall satisfy the department that he or she was prevented by accident, mistake or misfortune from filing a management plan which is required to be filed on or before October 1 or a management activity report which is required to be filed on or before February 1 of the year following the year when the management activity occurred, the department may receive that management plan or management activity report at a later date;

provided, however, no management plan shall be received later than December 31 and no management activity report shall be received later than March 1.

(c) The department of forests, parks and recreation shall periodically review the management plans and each year review the management activity reports that have been filed. At intervals not to exceed ten years, that department shall inspect each parcel of managed forest land qualified for use value appraisal to verify that the terms of the management plan have been carried out in a timely fashion. If that department finds that the management of the tract is contrary to the conservation or forest management plan, or contrary to the minimum acceptable standards for conservation or forest management, it shall file with the owner, the assessing officials and the director an adverse inspection report within 30 days of the inspection.

(d) After a parcel of managed forest land has been removed from use value appraisal due to an adverse inspection report, a new application for use value appraisal will not be considered for a period of five years, and then shall be approved by the department of forests, parks and recreation only if a compliance report has been filed with the new application certifying that appropriate measures have been taken to bring the parcel into compliance with minimum acceptable standards for forest or conservation management.

(e) Any applicant for appraisal under this subchapter bears the burden of proof as to his or her qualification. Any documents submitted by an applicant as evidence of income shall be held in confidence by any person accepting or reviewing them pursuant to provisions of this subchapter, and shall not be made available for public examination, whether or not such person is subject to the provisions of subdivision 317(a)(6) of Title 1.

**History.** Added 1977, No. 236 (Adj. Sess.), § 1; amended 1983, No. 220 (Adj. Sess.), §§ 4, 5; 1987, No. 57, § 4, eff. July 1, 1988; No. 76, § 18; 1993, No. 49, § 26; 1995, No. 169 (Adj. Sess.), § 3, eff. May 15, 1996; No. 178 (Adj. Sess.), § 287; 1997, No. 60, § 68e; 2001, No. 140 (Adj. Sess.), § 32, eff. June 21, 2002; 2007, No. 205 (Adj. Sess.), § 5, eff. June 10, 2008.

### **§ 3756. Qualification for use value appraisal**

(a) The owner of eligible agricultural land, farm buildings or managed forest land shall be entitled to have eligible property appraised at its use value provided the owner shall have applied to the director on or before September 1 of the previous tax year, on a form approved by the board and provided by the director. A farmer, whose application has been accepted on or before December 31 by the director of the division of property valuation and review of the department of taxes for enrollment for the use value program for the current tax year, shall be entitled to have eligible property appraised at its use

value, if he or she was prevented from applying on or before September 1 of the previous year due to the severe illness of the farmer.

(b) [Deleted.]

(c) The director shall notify the applicant no later than April 15 of his or her decision to classify or refusal to classify his or her property as eligible for use value appraisal by delivery of such notification to him or her in person or by mailing such notification to his or her last and usual place of abode. In the case of a refusal, the director shall state the reasons therefor in the notification.

(d) The assessing officials shall appraise qualifying agricultural and managed forest land and farm buildings at use value appraisal as defined in subdivision 3752(12) of this title. If the land to be appraised is a portion of a parcel, the assessing officials shall:

(1) determine the contributory value of each portion such that the fair market value of the total parcel is comparable with other similar parcels in the municipality; and

(2) notify the landowner according to the procedures for notification of change of appraisal. The portion of the parcel that is not to be appraised at use value shall be appraised at its fair market value.

(e) Once a use value appraisal has been applied for and granted under this section, such appraisal shall remain in effect for subsequent tax years pursuant to the provisions of subsection (f) of this section, and until the property concerned is transferred to another owner or is no longer eligible under provisions of section 3752 or 3755 of this chapter, or due to a change of use or as otherwise provided in section 3757 of this chapter. If enrolled property is transferred to another owner, the new owner shall be entitled to continue to have the eligible property appraised at its use value, provided the property remains eligible and provided the new owner shall elect the continuation of use value appraisal on the property transfer tax return at the time of transfer and, within 30 days after the property transfer tax return has been received by the municipality for recording, has applied to the director and paid the fees described in this subsection. The grant of use value appraisals of agricultural forest land and farm buildings shall be recorded in the land records of the municipality by the clerk of the municipality. Applications shall include the fees specified in subdivision 1671(a)(6) or subsection 1671(c) of this title, and a fee of \$30.00 for deposit in a special fund established and managed pursuant to subchapter 5 of chapter 7 of this title. The fund shall be available as payment for the fees of the clerk of the municipality and for the improvement of the management of the program.

(f) Each year the director shall determine whether previously classified property is still eligible for use value appraisal and whether the amount of the previous

appraisal is still valid. If the director determines that previously classified property is no longer eligible, or that the property has undergone a change in use such that the use change tax may be levied, in accordance with section 3757 of this chapter, or that the use value appraisal should be fixed at a different amount than the previous year, he or she shall thereafter notify the property owner of that determination by delivery of the notification to him or her in person or by mailing such notification to his or her last and usual place of abode.

(g) The director shall execute such other forms and the board shall adopt such other procedures and regulations, as are needed to assure a fair opportunity for owners to qualify under this subchapter and to assure compliance with the provisions of this chapter.

(h) By March 15, the director shall mail to each municipality a list of property in the municipality which is to be taxed based on its use value appraisal. The list shall include the owners' names, a grand list number or description of each parcel of land to be appraised at use value, the acreage to be taxed on the basis of use value, the use values to be used for land, and the number and type of farm buildings to be appraised by the assessing officials at use value. The assessing officials shall determine the listed value of the land to be taxed at use value and its estimated fair market value, and fill in these values and the difference between them on the form. This form shall be used by the treasurer or the collector of current taxes to make up tax bills such that the owner is billed only for taxes due on his or her property not enrolled in the program, plus taxes due on the use value of property enrolled in the program. The assessing officials shall submit the completed form to the director by July 5.

(i) The director shall remove from use value appraisal an entire parcel of managed forest land and notify the owner in accordance with the procedure in subsection (b) of this section when the department of forests, parks and recreation has not received a management activity report or has received an adverse inspection report, unless the lack of conformance consists solely of the failure to make prescribed planned cutting. In that case, the director may delay removal from use value appraisal for a period of one year at a time to allow time to bring the parcel into conformance with the plan.

(j) The commissioner may exempt a farmer-owner of agricultural land and farm buildings located within the municipality and otherwise eligible under this subchapter for use value appraisal from the terms of the definition of a "farmer" contained in subdivision 3752(7) of this chapter, for a year at a time, because of personal hardship created by personal or family disability or death, by economic disaster such as loss of farm buildings, equipment, or livestock due to fire or disease, or natural disaster such as flood or drought. The agricultural land and farm buildings concerned shall continue in this

instance to be taxed on the basis of use value appraisal.

**History.** Added 1977, No. 236 (Adj. Sess.), § 1; amended 1983, No. 220 (Adj. Sess.), §§ 6-10; 1985, No. 35, § 1; 1987, No. 57, § 5, eff. July 1, 1988; 1987, No. 200 (Adj. Sess.), § 60; 1995, No. 29, § 4, eff. April 14, 1995; 1995, No. 178 (Adj. Sess.), § 288; 1997, No. 59, § 11, eff. June 30, 1997; 2001, No. 140 (Adj. Sess.), § 33, eff. June 21, 2002; 2007, No. 190 (Adj. Sess.), § 2, eff. June 6, 2008; No. 205 (Adj. Sess.), §§ 2, 6, eff. June 10, 2008.

### § 3757. Land use change tax

(a) Land which has been classified as agricultural land or managed forest land pursuant to this chapter shall be subject to a land use change tax upon the development of that land, as defined in section 3752 of this chapter. Said tax shall be at the rate of 20 percent of the full fair market value of the changed land determined without regard to the use value appraisal; or the tax shall be at the rate of 10 percent if the owner demonstrates to the satisfaction of the director that the parcel has been enrolled continuously more than 10 years. If changed land is a portion of a parcel, the fair market value of the changed land shall be the fair market value of the changed land prorated on the basis of acreage, divided by the common level of appraisal. Such fair market value shall be determined as of the date the land is no longer eligible for use value appraisal. This tax shall be in addition to the annual property tax imposed upon such property. Nothing in this section shall be construed to require payment of an additional land use change tax upon the subsequent development of the same land, nor shall it be construed to require payment of a land use change tax merely because previously eligible land becomes ineligible, provided no development of the land has occurred.

(b) Any owner of eligible land who wishes to withdraw land from use value appraisal shall petition for a determination of the fair market value of the land at the time of the withdrawal. Thereafter land which has been withdrawn shall be appraised and listed at its full fair market value in accordance with the provisions of chapter 121 of this title. Said determination of the fair market value shall be used in calculating the amount of the land use change tax that shall be due when and if the development of the land occurs.

(c) The determination of the fair market value of the land as of the date the land is no longer eligible for a use value appraisal, or as of the time of the withdrawal of the land from use value appraisal, shall be made by the director. The determination shall be made within 30 days after the date that the owner or assessing officials petition for the determination and shall be effective on the date of dispatch to the owner.

(d) The land use change tax shall be due and payable by the owner 30 days after the tax notice is mailed to the taxpayer. The tax shall be paid to the commissioner for

deposit into the general fund. The commissioner shall issue a form to the assessing officials which shall provide for a description of the land developed, the amount of tax payable, and the fair market value of the land at the time of development or withdrawal from use value appraisal. The owner shall fill out the form and shall sign it under the penalty of perjury. After receipt of payment, the commissioner shall furnish the owner with one copy, shall retain one copy and shall forward one copy to the local assessing officials and one to the register of deeds of the municipality in which the land is located. Thereafter, the land which has been developed shall be appraised and listed at its full fair market value in accordance with the provisions of chapter 121 of this title.

(e) The owner of any classified land receiving use value appraisal under this subchapter shall immediately notify the director of:

(1) the development of the land, as defined in section 3752 of this chapter;

(2) of any change or discontinuance of use of the classified land so that it is no longer eligible for use value appraisal or is eligible for a different use value appraisal under this subchapter; and

(3) of any transfer of ownership. A transfer of ownership, alone, will not affect eligibility of the parcel, and no new maps will be required solely because of a transfer, but failure to provide maps, a new application, or transfer information to the division of property valuation and review within 30 days of a request being sent by certified mail by the director will result in removal of the parcel from the program.

(f) The application for use value appraisal of agricultural and forest land, once approved by the state, shall be recorded in the land records of the municipality and shall constitute a lien to secure payment of the land use change tax to the state upon development. The landowner shall bear the recording cost. The land use change tax and any obligation to repay benefits paid in error shall not constitute a personal debt of the person liable to pay the same, but shall constitute a lien which shall run with the land. All of the administrative provisions of chapter 151 of this title, including those relating to collection and enforcement, shall apply to the land use change tax.

(g) Upon application, the commissioner may abate a use change tax levy concerning agricultural land found eligible for use value appraisal under subdivision 3752(1)(A) of this title, in the following cases:

(1) if a disposition of such property resulting in a change of use of it takes place within five years of the initial assessment at use value because of the permanent physical incapacity or death of the individual farmer-owner or farmer-operator of the property.

(2) if a disposition of the property was necessary in order to raise funds to continue the agriculture operation of the seller. In this case, the commissioner shall consider the financial gain realized by the sale of the land and whether, in respect to that gain, payment of the use change tax would significantly reduce the ability of the seller to continue using the remaining property, or any part thereof, as agricultural land.

(h) Land condemned as a result of eminent domain or sold voluntarily to a condemning authority in anticipation of eminent domain proceedings is exempt from the levy of a land use change tax under this section.

(i) Nothing in this section shall be construed as permitting an owner to engage in the development of land in violation of any conservation restriction in effect on said land.

(j) Land transferred to the United States Forest Service is exempt from the levy of a use change tax under this section, provided all of the following apply:

(1) land transferred is eligible for use value appraisal at the time of the transfer;

(2) the transfer is in consideration for the receipt from the United States Forest Service of land of approximately equal value, as determined by the commissioner; and

(3) the landowner has submitted to the commissioner in writing a binding document that would substitute the land received for the land transferred to the Forest Service, for the purposes of this chapter.

(k) Conservation and preservation rights and interests held by an agency of the United States or by a qualified holder, as defined in chapter 34 of Title 10, shall be exempt from the levy of a use change tax. Upon request of the agency or qualified holder, the commissioner may petition the director to release the conservation and preservation rights and interests from any lien recorded pursuant to this chapter.

**History.** Added 1977, No. 236 (Adj. Sess.), § 1; amended 1983, No. 19; 1983, No. 241 (Adj. Sess.); 1987, No. 57, § 6, eff. July 1, 1988; 1987, No. 130 (Adj. Sess.), § 3, eff. March 31, 1988; 1989, No. 222 (Adj. Sess.), § 43, eff. May 31, 1990; 1995, No. 29, § 40, eff. April 14, 1995; 1995, No. 178 (Adj. Sess.), § 289; 1997, No. 60, § 61, eff. June 26, 1997; 1999, No. 49, § 85, eff. June 2, 1999; 2001, No. 140 (Adj. Sess.), § 29, eff. June 21, 2002; 2003, No. 68, § 86, eff. June 18, 2003; 2005, No. 14, § 5, eff. July 1, 2006; No. 14, § 8, eff. May 3, 2005; 2007, No. 190 (Adj. Sess.), § 3, eff. June 6, 2008; No. 205 (Adj. Sess.), § 3, eff. June 10, 2008.

### § 3758. Appeals

(a) Whenever the director denies in whole or in part any application for classification as agricultural land or

managed forest land or farm buildings, or grants a different classification than that applied for, or the director or assessing officials fix a use value appraisal, or determine that previously classified property is no longer eligible or that the property has undergone a change in use, the aggrieved owner may appeal the decision of the director to the director within 30 days of the decision, and from there in the same manner and under the same procedures as an appeal from a decision of a board of civil authority, as set forth in subchapter 2 of chapter 131 of this title; and may appeal the decision of the assessing officials in the same manner as an appeal of a grand list valuation.

(b) Any owner who is aggrieved by the determination of the fair market value of classified land for the purpose of computing the land use change tax may appeal in the same manner as an appeal of a grand list valuation.

(c) Whenever the commissioner denies a request for an exemption from the terms of the definition of a "farmer" as provided in subsection 3756(j) of this title, the aggrieved person may appeal the decision to the commissioner, and from there to the superior court in the same manner and under the same procedures as an appeal from a decision of the board of civil authority, as set forth in subchapter 2 of chapter 131 of this title.

(d) Any owner who is aggrieved by a decision of the department of forests, parks and recreation concerning the filing of an adverse inspection report or denial of approval of a management plan may appeal to the commissioner of the department of forests, parks and recreation. An appeal of this decision of the commissioner may be taken to the superior court in the same manner and under the same procedures as an appeal from a decision of a board of civil authority, as set forth in subchapter 2 of chapter 131 of this title.

**History.** Added 1977, No. 236 (Adj. Sess.), § 1; amended 1983, No. 220 (Adj. Sess.), §§ 11, 12; 1987, No. 57, § 7, eff. July 1, 1988; 1987, No. 130 (Adj. Sess.), § 4; 1995, No. 178 (Adj. Sess.), § 290; 2007, No. 190 (Adj. Sess.), § 4, eff. June 6, 2008.

### § 3759. Repealed

**History.** Repealed. 1995, No. 178 (Adj. Sess.), § 291(1).

### § 3760. Payment to municipalities

(a)(1) Annually the state shall pay to each municipality the amount necessary to limit its tax rate increase in the prior year due to the loss of municipal property tax revenue for that year based on use value of enrolled property as compared to municipal property tax revenue for that year based on fair market value of enrolled property, to zero.

(2) The director of property valuation and review shall determine the amount of the available funds under this

section to be paid to each municipality, and a municipality may appeal the director's decision in the same manner and under the same procedures as an appeal from a decision of a board of civil authority, as set forth in subchapter 2 of chapter 131 of this title.

(3) On November 1 of each year, the director of property valuation and review shall pay to each municipality the amount calculated as described in this section. If the appropriation for the year is insufficient to pay the full amount due to every municipality under this subsection, payments in that year shall be made to such towns proportionately.

(4) If the appropriation for the year is insufficient to pay the full amount due to any municipality for enrolled property owned by another municipality, the municipality in which the property is located may assess the other municipality and the other municipality shall pay the difference.

(5) The director's calculation of payment amounts to municipalities shall be based on grand list values and total tax appropriations as submitted to the director for the prior year.

(b) Assessing officials shall appraise property enrolled in the program at fair market value consistent with other appraisals. On or before July 5, the assessing officials shall provide the director with the listed value of all enrolled property in the municipality. If the director certifies that the value set by the assessing officials is significantly above the fair market value or is not equitable with other assessments, the director's estimate of the fair market value shall be substituted for that of the assessing officials.

(c) A town aggrieved by the director's decision under this section may appeal that decision under the same procedures as an appeal from a decision of the board of civil authority.

**History.** Added 1995, No. 178 (Adj. Sess.), § 292a; amended 1997, No. 60, § 63, eff. June 26, 1997; 2003, No. 66, § 287; 2007, No. 205 (Adj. Sess.), § 10, eff. June 10, 2008.

#### **§ 3761. Notice to property taxpayers**

Each year prior to June 1, the director shall prepare a notice of the current use value appraisal program established by this subchapter describing its pertinent provisions, the manner in which taxpayers may apply to participate, and the dates and deadlines for application. Such notice shall be printed by the director and supplied in sufficient number to each town in the state for inclusion in property tax bills. The town treasurer or collector of taxes shall include such notice in each tax bill, where applicable. Towns which use envelopes or mailers not able to accommodate notices describing the current use value appraisal program may distribute such

notices in an alternative manner.

**History.** Added 1985, No. 212 (Adj. Sess.), eff. June 2, 1986; amended 1995, No. 29, § 5, eff. April 14, 1995.

#### **§ 3762. Repealed**

**History.** Repealed. 1995, No. 178 (Adj. Sess.) § 291(3).

#### **§ 3763. Public records**

Notwithstanding any provision to the contrary in 1 V.S.A. §317, section 3102 of this title or any other provision of law, the names and addresses of taxpayers, the description of eligible property, the current use valuation of such property participating in the current use value appraisal program under this chapter and the amount reimbursed by the state to the town with respect to the eligible property shall be public records subject to public inspection and copying under 1 V.S.A. chapter 5, subchapter 3.

**History.** Added 1985, No. 242 (Adj. Sess.), § 311; amended 1995, No. 169 (Adj. Sess.), § 4, eff. May 15, 1996.

#### **§ 3763a. Repealed**

**History.** Repealed. 2003, No. 70 (Adj. Sess.), § 35, eff. March. 1, 2004.

#### **§ 3764. Repealed**

**History.** Repealed. 1995, No. 178 (Adj. Sess.), § 291(4).

#### **§ 3765. Repealed**

**History.** Repealed. 1995, No. 178 (Adj. Sess.), § 291(5).

#### **§ 3766. Repealed**

**History.** Repealed. 1995, No. 178 (Adj. Sess.), § 291(6).

#### **§ 3767. Repealed**

**History.** Repealed. 1995, No. 178 (Adj. Sess.), § 291(7).

#### **§ 3768. Repealed**

**History.** Repealed. 1995, No. 178 (Adj. Sess.), § 291(8).

#### **§ 3769. Repealed**

**History.** Repealed. 1995, No. 178 (Adj. Sess.), § 291(9).

#### **§ 3770. Repealed**

**History.** Repealed. 1995, No. 178 (Adj. Sess.), § 291(10).

#### **§ 3771. Repealed**

**History.** Repealed. 1995, No. 178 (Adj. Sess.), §

291(11).

**§ 3772. Repealed**

**History.** Repealed. 1995, No. 178 (Adj. Sess.), § 291(12).

**§ 3773. Repealed**

**History.** Repealed. 1995, No. 178 (Adj. Sess.), § 291(13).

**§ 3774. Repealed**

**History.** Repealed. 1995, No. 178 (Adj. Sess.), § 291(14).

**§ 3775. Repealed**

**History.** Repealed. 1995, No. 178 (Adj. Sess.), § 291(15).

**§ 3776. Fee hunting prohibition**

(a) As of September 1, 1997, no person may charge or receive a fee, consideration or other thing of value in exchange for the right to hunt or fish on land enrolled in a use value appraisal program under this chapter.

(b) Upon a finding by the secretary that there has been a violation of the provisions of this section, the land in question shall be removed from the use value appraisal program. Upon development, the land shall be subject to the land use change tax.

**History.** Added 1997, No. 60, § 68, eff. June 26, 1997.