



**Notice:** This guide is for informational purposes only and does not provide legal advice or create an attorney-client relationship. You should contact an attorney to obtain advice with respect to any particular issue or problem.

## Vermont's Current Use Program

Rising property values and the associated tax increases can make it difficult for farmers to continue to own and operate Vermont farmland. Vermont's Use Appraisal Program (also known as the Current Use Program) is designed to keep the taxes on these working lands affordable so long as the land is being used for active agricultural purposes.<sup>1</sup> Under the Current Use Program, eligible agricultural land is taxed at a lower "use" rate, as opposed to the traditional development land tax rate (assessed at its highest and best use). This favorable tax treatment is particularly important in areas with increasing development pressure because it reduces the pressure for a farmer to sell or develop their land, thus keeping farmland in operation.

The Vermont Current Use Advisory Board sets the tax rate (called the "Use Value") for enrolled lands each year. For the 2020 tax year beginning on April 1, 2020, the Use Value for agricultural land is \$382 an acre.<sup>2</sup> The Use Value of the enrolled acreage will be used to calculate a farm's property taxes, instead of using the farm's assessed value.

If you are interested in Vermont's Current Use Program, this guide outlines the basics of the program, the eligibility criteria, some initial details regarding how to apply, and the impacts of enrolling farmland in current use.

### What Land Qualifies for the Current Use Program?

To be eligible, your land must qualify as agricultural land, which means the land must be in agricultural use and be at least twenty-five acres.<sup>3</sup> Land is in agricultural use if it is being used to "grow hay or cultivate crops, pasture livestock, cultivate trees bearing fruit, or produce an annual maple product."<sup>4</sup> Additionally, your land is presumed to be "in agricultural use" if it is (1) owned by a farmer, (2) leased to a qualified farmer under at least a three-year written lease, or (3) meets certain revenue targets (specifically \$2,000 in gross annual income from the sale of farm crops in

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<sup>1</sup> 32 V.S.A. § 3752. The program also provides similar tax advantages to forested or conserved lands, provided certain qualifying conditions are met.

<sup>2</sup> Vermont Department of Taxes, Current Use, <https://tax.vermont.gov/property-owners/current-use> (last accessed September 14, 2020).

<sup>3</sup> 32 V.S.A. § 3752 (1).

<sup>4</sup> *Id.*



one of the last two calendar years, or three of the last five years for parcels of up to 25 acres, and \$75 per acre for each acre over 25).<sup>5</sup>

A “farmer” for purposes of this Program is a person who either (1) earns at least half of their annual gross income from farming, or (2) produces and sells farm crops that are processed in a farm facility situated on the land enrolled in the Current Use Program or on a housesite next to the enrolled land where (a) the gross income from the sale of the processed products—when added to other gross income from the farming business—equals at least half of their annual gross income and (b) a minimum of 75 percent of the farm crops processed in the farm facility are produced on the farm.<sup>6</sup>

**Note:** Farm buildings located on agricultural land may also be enrolled if they are both (1) in active agricultural use by a farmer; (2) are owned by a farmer or leased to a farmer under a written lease for a term of three years or more; and (3) are located on enrolled land or on a housesite next to the enrolled land.<sup>7</sup> A dwelling house will not be eligible for enrollment unless it is being used exclusively to house farm workers as a nonmonetary benefit of the farm employment.<sup>8</sup>

### How do I Apply?

If you are a first time applicant, you must submit your applications to enroll in the Current Use Program by September 1st of each year. The application must include the following:

- Three copies of a qualifying map that meets the Vermont Department of Taxes “[Map Standards](#)”<sup>9</sup>;
- An application fee of \$100;
- Completed [CU-301 form](#) (the Current Use Program Use Appraisal Voucher Application for Agricultural Land, Forest Land, and Conservation Land and Farm);
- Completed [CU-307 form](#) (the Current Use Payment Voucher);
- If there is more than one landowner, each owner must submit a completed [CU-302 form](#) (Additional Owners Form for Use Appraisal Application), and pay an additional application fee of \$15 per CU-302 form submitted; and
- Supporting documentation for the application.

You may file your applications electronically on the Vermont Department of Taxes website through an online system, [eCuse](#).<sup>10</sup> If you prefer to submit your application via U.S. mail, you may request hard copies of the application materials from the Vermont Department of Taxes.

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.* § 3752(7).

<sup>7</sup> *Id.* § 3752(14).

<sup>8</sup> 32 V.S.A. 3752(14)

<sup>9</sup> Vermont Department of Taxes, Map Standards, <https://tax.vermont.gov/sites/tax/files/documents/Map%20Standards%207-09.pdf> (last accessed Nov. 17, 2020).

<sup>10</sup> Vermont Department of Taxes, Welcome to eCuse, <https://secure.vermont.gov/TAX/ecuse/home> (last accessed September 14, 2020).

## What Potential Penalties are Associated with Withdrawal from Current Use?

Once agricultural land is enrolled in the Current Use Program, the enrolled land is subject to a land use change tax equal to 10 percent of the fair market value of the developed parcel or portion of the parcel if the land is ever developed.<sup>11</sup> To secure this commitment, the enrolled property is statutorily subject to a contingent lien in favor of the State of Vermont (which will convert to an actual lien if the land is ever developed).<sup>12</sup> Again, this lien/land use change tax is only triggered if you develop any of the agricultural land enrolled in the Current Use Program. Development means the construction of a building, road, or other structure, or any mining excavation or landfill activity.<sup>13</sup> Development can also mean subdividing a parcel if it results in parcels smaller than the 25 acre requirement.<sup>14</sup> Notably, there are exceptions from the definition of development for improvements related to farming purposes and for inter-family transfers.<sup>15</sup> If land is developed, the lien will remain on the developed part of the land until the land use change tax is paid off.

You must also keep up with water quality requirements in Vermont's Agricultural Water Quality statute ([Title 6 Chapter 215](#)) and any rules, permits, or certifications issued under that statute, including [Vermont's Required Agricultural Practices](#) (RAPs).<sup>16</sup> The Vermont Agency of Agriculture, Food, and Markets (VAAFAM) may direct the Vermont Department of Taxes to revoke your current use enrollment if you have violated any water quality requirements.<sup>17</sup> When the land and buildings are removed from the program, the property taxes will no longer be based upon the use value but will be based upon the assessed value of the land and buildings.<sup>18</sup>

## Do I Have to Renew my Application?

Once land is enrolled in the Current Use Program, you must annually certify that your enrolled land and farm buildings still meet the Current Use program's requirements. You can certify your land either online using the eCuse database or by certified mail.<sup>19</sup> Certifications are due by November 1st each year. If you choose to certify by mail, the Vermont Department of Taxes will send you a pre-printed [CU-313 Use Value Appraisal Program Agricultural Land Buildings Certification Form](#). If you fail to complete this certification, the enrolled land will no longer be taxed at the Current Use Value and will be taxed at its higher assessed value.<sup>20</sup>

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<sup>11</sup> 32 V.S.A. § 3757; Vermont Department of Taxes, Land Use Change Tax, <https://tax.vermont.gov/property-owners/current-use/land-use-change-tax> (last accessed October 25, 2020).

<sup>12</sup> Vermont Department of Taxes, Subordination of a Lien, <https://tax.vermont.gov/property-owners/current-use#lien> (last accessed October 25, 2020).

<sup>13</sup> 32 V.S.A. § 3752 (5).

<sup>14</sup> *Id.* § 3752 (5).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* § 3756(i)(2)(A).

<sup>17</sup> *Id.* § 3752 (5).

<sup>18</sup> *Id.* § 3756(i)(2)(B).

<sup>19</sup> Vermont Department of Taxes, Agricultural Certification, <https://tax.vermont.gov/property-owners/current-use/certification> (last accessed October 25, 2020).

<sup>20</sup> *Id.*

### Can I Withdraw from the Current Use Program?

You may withdraw all or any part of your enrolled land at any point.<sup>21</sup> If the agricultural land was developed at any time during its enrollment in the Program or is developed in the future, then you must pay the land use change tax (described above) at the time of withdrawal and from that point on, you will be subject to taxes at the higher assessed value. To withdraw the land, you must fill out [Form LV-314](#) (Request for Withdrawal from the Use Appraisal Program) and file the form with the Department of Taxes. This lien may need to be prepaid to clear title if the landowner is developing the enrolled lands and conveying these to a new owner.<sup>22</sup>

### What if I'm Transferring Ownership of Enrolled Land?

You may transfer ownership of enrolled land. If the new owner wishes to continue enrollment in the Current Use Program, then the new owner must fill out a new application to keep it in current use.<sup>23</sup> The new owner must submit its application within 30 days of the transfer.

### Can I Operate an Accessory On-Farm Business on Enrolled Land?

The answer is likely yes in many instances as this use will be related to the your farm operations as provided in the eligibility definitions discussed above.<sup>24</sup> Some instances, however, may require a closer analysis of the underlying nature and type of the proposed accessory on-farm business, including for some value-added production activities. Notably, the definition of a “farmer” can include income related to value-added production, provided that 75 percent of the farm crops being processed are actually produced on the farm (for complete discussion of the “farmer” definition, see page 1).<sup>25</sup> The definition of “farm building” also encompasses up to \$100,000 of the value of a facility processing farm crops, again provided that 75 percent of the farm crops being processed are produced on the farm.<sup>26</sup>

### Conclusion

Vermont's Current Use Program plays an important role in keeping the taxes affordable for actively used farmland in the state and in keeping working lands available for farming. Farmers should be aware of this significant opportunity to reduce their taxes and of the requirements for enrolling and maintaining their eligibility for enrollment, notably, maintaining their compliance with water quality requirements, use restrictions, and annual certification requirements.

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<sup>21</sup> Vermont Department of Taxes, Withdrawal, <https://tax.vermont.gov/property-owners/current-use/removing-property-from-current-use> (last accessed October 25, 2020).

<sup>22</sup> Vermont Department of Taxes, About the Program, <https://tax.vermont.gov/property/current-use/about> (last visited October 25, 2020).

<sup>23</sup> Vermont Department of Taxes, Withdrawal, <https://tax.vermont.gov/property-owners/current-use/removing-property-from-current-use> (last accessed October 25, 2020).

<sup>24</sup> See, e.g., *Mollica v. Division of Property Valuation and Review*, No. 06-410 (Vt. Sup. Ct., May 2, 2008).

<sup>25</sup> 32 V.S.A. § 3752(7).

<sup>26</sup> *Id.* § 3752(14).

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