

OFFICE OF LEGISLATIVE LEGAL SERVICES

COLORADO GENERAL ASSEMBLY

DIRECTOR
Dan L. Cartin

DEPUTY DIRECTOR
Sharon L. Eubanks

REVISOR OF STATUTES
Jennifer G. Gilroy

ASSISTANT DIRECTORS
Deborah F. Haskins Bart W. Miller
Julie A. Pelegrin

SENIOR ATTORNEYS
Jeremiah B. Barry Duane H. Gail
Christine B. Chase Jason Gelender
Gregg W. Fraser Robert S. Lackner
Thomas Morris



STATE CAPITOL BUILDING, ROOM 091
200 EAST COLFAX AVENUE
DENVER, COLORADO 80203-1782

TELEPHONE: 303-866-2045 FACSIMILE: 303-866-4157
E-MAIL: OLLS.GA@STATE.CO.US

SENIOR STAFF ATTORNEYS
Charles Brackney Nicole H. Myers
Edward A. DeCecco Jerry Payne
Michael J. Dohr Jane M. Ritter
Kristen J. Forrestal Richard Sweetman
Esther van Mourik

**SENIOR STAFF ATTORNEY
FOR ANNOTATIONS**
Michele D. Brown

STAFF ATTORNEYS
Jennifer A. Berman Brita Darling
Kale Meyer

PUBLICATIONS COORDINATOR
Kathy Zambrano

RESEARCH MEMO

TO: Senator Gail Schwartz

FROM: John Kilgour, Office of Legislative Legal Services

DATE: March 6, 2012

SUBJECT: Colorado Tax Incentives Related to Forestry and Forest Products

I. Question

You recently asked this office for information about Colorado statutes allowing various forms of tax relief related to forestry and forest land. This memorandum discusses the tax treatment of forestry products and equipment and forest land as set forth in legislation enacted in recent years by the General Assembly.

II. Analysis**A. Property Tax****1. Forest Land Classified as Agricultural Land for Property Tax Purposes**

In 1990, the General Assembly enacted House Bill 90-1229, which amended the definition of "agricultural land" contained in section 39-1-102 (1.6) (a), C.R.S., to essentially include forest land¹ producing wood products. Section 39-1-102 (1.6) (a) (II), C.R.S., now reads as follows:

¹ Section 39-1-102 (4.3), C.R.S., defines "forest land" as "land of which at least ten percent is stocked by forest trees of any size and includes land that formerly had such tree cover and that will be naturally or artificially regenerated. "Forest land" includes roadside, streamside, and shelterbelt strips of timber which have a crown width of at least one hundred twenty feet. "Forest land" includes unimproved roads and trails, streams, and clearings which are less than one hundred twenty feet wide."

39-1-102. Definitions. As used in articles 1 to 13 of this title, unless the context otherwise requires:

(1.6) (a) "Agricultural land", whether used by the owner of the land or a lessee, means one of the following:

(II) **A parcel of land that consists of at least forty acres, that is forest land, that is used to produce tangible wood products that originate from the productivity of such land for the primary purpose of obtaining a monetary profit, that is subject to a forest management plan, and that is not a farm or ranch,** as defined in subsections (3.5) and (13.5) of this section. "Agricultural land" under this subparagraph (II) includes land underlying any residential improvement located on such agricultural land. (Emphasis added)

Forest land that meets the requirements of this provision is treated as agricultural land for property tax purposes.

2. Agriculture Includes Silviculture for Property Tax Purposes

In 2010, the General Assembly adopted Senate Bill 10-177, which was sponsored by you and Senator Gibbs in the Senate and Representative Scanlan in the House. Senate Bill 10-177 modified the definition of "agriculture", as that term is used in the definition of "agricultural and livestock products", to include "silviculture", which is the art of cultivating a forest or forestry. As amended by Senate Bill 10-177, section 39-1-109 (1.1), C.R.S., now states:

39-1-102. Definitions. As used in articles 1 to 13 of this title, unless the context otherwise requires:

(1.1) "Agricultural and livestock products" means plant or animal products in a raw or unprocessed state that are derived from the science and art of agriculture, regardless of the use of the product after its sale and regardless of the entity that purchases the product. "Agriculture", for the purposes of this subsection (1.1), means farming, ranching, animal husbandry, and horticulture. **Effective July 1, 2013, "agriculture" includes silviculture.** (Emphasis added)

Sections 39-3-121 and 39-3-122, C.R.S., exempt agricultural products and agricultural equipment from property taxation as follows:

39-3-121. Agricultural and livestock products - exemption. Agricultural and livestock products shall be exempt from the levy and collection of property tax.

39-3-122. Agricultural equipment used in production of agricultural products - exemption.
Agricultural equipment which is used on any farm or ranch in the production of agricultural products shall be exempt from the levy and collection of property tax.

Because "[a]gricultural and livestock products" and "[a]gricultural equipment which is used on any farm or ranch in the production of agricultural products" are exempt from property tax, it would appear that the effect of the change to section 39-1-102 (1.1), C.R.S., is to also exempt forestry products and equipment used in forestry operations from property taxation beginning on July 1, 2013.²

Additionally, Senate Bill 10-177 amended the definition of "implements of husbandry", as used in articles 1 to 4 of title 42, C.R.S., to include "personal property valued by the county assessor as silvicultural". Section 42-1-102 (44), C.R.S., as amended by Senate Bill 10-177, now reads as follows:

42-1-102. Definitions. As used in articles 1 to 4 of this title, unless the context otherwise requires:

(44) (a) On and after July 1, 2000, "implement of husbandry" means every vehicle that is designed, adapted, or used for agricultural purposes. It also includes equipment used solely for the application of liquid, gaseous, and dry fertilizers. Transportation of fertilizer, in or on the equipment used for its application, shall be deemed a part of application if it is incidental to such application. It also includes hay balers, hay stacking equipment, combines, tillage and harvesting equipment, agricultural commodity handling equipment, and other heavy movable farm equipment primarily used on farms or in a livestock production facility and not on the highways. Trailers specially designed to move such equipment on highways shall, for the purposes of part 5 of article 4 of this title, be considered as component parts of such implements of husbandry.

(b) **Effective July 1, 2013, for purposes of this section, "implements of husbandry" includes personal property valued by the county assessor as silvicultural.**
(Emphasis added)

Pursuant to section 42-3-104 (3) (d), C.R.S., "implements of husbandry", which as of July 1, 2013, will include silvicultural personal property, are not

² Section 39-1-102 (3.5), C.R.S., defines "farm" as "a parcel of land which is used to produce agricultural products that originate from the land's productivity for the primary purpose of obtaining a monetary profit."

required to be registered under article 3 of title 42, C.R.S. Therefore, the change has the effect of exempting forestry equipment from the specific ownership tax under said article 3:

42-3-104. Exemptions - specific ownership tax - registration - domicile and residency - rules - definitions. (3) Registration shall not be required for the following:

(d) Farm tractors and implements of husbandry designed primarily for use and used in agricultural operations;

3. Limited Property Tax Exemption for Horticultural Improvements

Section 39-3-126, C.R.S., provides a limited property tax exemption for landowners who plant trees on their property. If planting trees on the land increases the value of the land, the amount of the increase in value shall not be taken into account in determining the actual value of the land for a period of thirty years following the planting of the trees:

39-3-126. Horticultural improvements - exemption - limitation - exception. Any increase in value of privately owned lands resulting from the planting of trees shall not be taken into account in determining the actual value of such lands for a period of thirty years from the date of planting such trees. This section shall apply to all lands so planted; however, in the event that any trees become sufficiently mature as to be of economic use and value prior to the expiration of thirty years, any increase in use and value shall be thereafter taken into account in determining the actual value of such lands. (Emphasis added)

B. Income Tax

1. Income Tax Deduction for Wildfire Mitigation Measures

In 2008, the General Assembly passed legislation allowing an income tax deduction for landowners that undertake wildfire mitigation measures on property located within Colorado during the 2009 through 2014 tax years. The amount of the deduction allowed is 50% of the amount of the landowner's costs incurred in performing the wildfire mitigation measures, but the deduction may not exceed \$2,500 or the amount of the landowner's taxable

income. House Bill 08-1110 enacted the change to section 39-22-104 (4) (n), C.R.S., as follows:

39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - definitions - repeal.

(4) There shall be subtracted from federal taxable income:

(n) (I) (A) For income tax years commencing on or after January 1, 2009, but prior to January 1, 2014, an amount equal to fifty percent of a landowner's costs incurred in performing wildfire mitigation measures in that income tax year on his or her property located within the state; except that the amount of the deduction claimed in an income tax year shall not exceed two thousand five hundred dollars or the total amount of the landowner's federal taxable income for the income tax year for which the deduction is claimed, whichever is less.

C. Sales and Use Tax

1. Sales and Use Tax Exemption for Beetle-killed Wood Products

In 2008, the General Assembly adopted House Bill 08-1269, sponsored by Representative White and Senator Gibbs, which created a sales and use tax exemption for products made from salvaged trees killed or infested by mountain pine beetles:

39-26-723. Colorado pine beetle products - repeal. (1) For fiscal years commencing on or after July 1, 2008, but prior to the fiscal year commencing on July 1, 2013, there shall be exempt from taxation under the provisions of parts 1 and 2 of this article all sales, storage, and use of wood from salvaged trees killed or infested in Colorado by mountain pine beetles, including but not limited to products such as lumber, furniture built from the salvaged trees, and wood chips or wood pellets generated from the salvaged trees.

As indicated in this section, the exemption is available "[f]or fiscal years commencing on or after July 1, 2008, but prior to the fiscal year commencing on July 1, 2013".

Please contact this office if you have additional questions that were not addressed by this memorandum.

S:\LCS\Committees\INTERIM\2012\Lower North Fork Wildfire Commission\Materials_September 5 Meeting\SchwartzMemo.wpd