



YOU AND YOUR FOREST: LETTER 2

Protecting Your Assets

Assets are the economic resources of a business that are expected to be of benefit in the future. Cash, office supplies, merchandise, furniture, land, and buildings are examples. In the case of forest property, assets can include trees and other plants, soil, streams, bodies of water, road systems, trail systems, and wildlife habitat. Protecting one's forest assets is no different than protecting any other business property. The owner of a bed & breakfast, for example, stays in business by controlling costs, maintaining the physical assets, and generating income. The following topics are intended to introduce the forest landowner to some of the cost control and income strategies common to forestland ownership. ♦

Taxes

Property taxes, in many cases, can be the single highest cost associated with owning forest property. Your tax bill amount is based upon a tax rate which is applied against an assessed value of your property. The higher the tax rate, the higher your tax bill. Also, the higher the assessed value of your property, the higher your tax bill. The tax rate is fixed, based upon budgetary needs, and is non-negotiable. The assessed value of your property, however, is determined by the town's assessor, and should be roughly the same value per acre as similar property in the town. Forest properties, however, are quite diverse, which is why assessed value can get messy. A forest that has been recently harvested does not have the same value as a forest in need of a harvest. Forested parcels will have differing amounts of public road frontage and interior road development. Bodies of water and wetlands can influence the value of a forest parcel. All of these features should be considered when reviewing the assessed value of your forest property.

Once a year, landowners have an opportunity to grieve the assessed value of their property. Towns will set a date - sometime in the spring - in which property owners can request a review of their assessed values in front of the Board of Assessment Review. A request to re-



duce the assessed value of a property can be based upon differences in the assessed value of your property and similar properties in the town (unequal assessment); or it can be based upon an assessed value substantially higher than what forest properties sell for (excessive assessment).

Other assessment challenges can be raised based upon "unlawful assessment" and "misclassification," however, one should consult a lawyer on these. There is no guarantee that the Board will approve an assessment challenge; if so, the property owner will still have a chance to make his or her case in a court of law - consult a lawyer. Legal advice should be sought from a lawyer who has experience in forest property cases. Depending on how far one intends to pursue a change in his or her assessment, it may be necessary to hire a professional appraiser to determine property value which in addition, may require hiring a forester to perform a complete timber cruise of the property. Court challenges can be extremely costly. The costs must be weighed against potential savings before going the court route. ♦

Forest Tax Law

It may be possible to get a reduction in the tax bill by enrolling forestland into the Real Property Tax Law, Section 480-a. To qualify, forest property must be at least 50 acres in size, and the owner must also have a forest management plan professionally prepared by a qualified forester. Property enrolled in the 480-a program can save up to 80% on the property taxes, however, there are some costs. A severance tax of 6% must be paid to the county for all timber harvested from the property, and once enrolled, the landowner is committed to stay in the plan for 10 full years or else pay penalties. Most forest properties will not see an 80% reduction in taxes, therefore, it's a good idea to work through the formulas that are in the body of the Real Property Tax Law 480-a, first with your financial advisor. Most foresters are familiar with the Real Property Tax Law and would be able to assist in researching the potential benefits of enrolling forest property into the program. For more information on the New York State Forest Tax Law Section 480-a, go to:

<http://www.dec.state.ny.us/website/dlf/privland/privassist/taxlaw.html> ♦

Conservation Easements

A conservation easement involves the sale of some of a property owners rights to another party. Conservation easements had their beginning as a creative alternative to the outright purchase of property for the sake of protecting rare, critical, or unique habitat. Wetland areas important for waterfowl breeding and migration have been protected by conservation easements. The conservation easement, in theory, allows property to stay in private ownership, while at the same time providing the resource protection of public ownership (perhaps even more protection since public use of the area can be further controlled). Also, even though the landowner still retains rights to the property, he or she will likely see a reduction in land taxes. The public, in return, is assured of the resource protection at a fraction of the cost of an outright purchase. The ownership rights sold in a conservation easement can vary from the sale of development rights to the sale of recreational rights. Compensation for the rights sold can be anything from a lump sum payment, to a sharing of taxes, or both.

The potential combinations of rights sold and compensation are endless.



It's important for a landowner to understand that, once an ownership right has been sold, some of the rights retained may still be compromised. The sale of recreation rights, for example, may limit timber harvesting during hunting seasons, or the use of trails during snowmobile season. A landowners use of his or her non-easement land adjoining the easement may even be impacted, because that landowner does not have the right to negatively impact the rights that have been sold. Since conservation easements can last into perpetuity, all potential conflicts can almost be impossible to anticipate.

For more information on conservation easements go to:

<http://www.prfamerica.org/ConsEaseIndex.html> and <http://ohioline.osu.edu/cd-fact/1261.html> ♦

Timber Theft

It takes 80 to 100 years of growth to develop quality saw log trees. During that 80 to 100 years, the forest landowner – and likely his or her parents before – have invested countless hours and money (taxes alone) maintaining and nurturing the forest stands. Few things would be more upsetting than to have the trees and the habitat that you’ve worked so hard to develop, stolen and damaged. Theft can occur if a logger cutting on an adjoining landowner crosses over a boundary line and harvests trees on the neighboring property. Boundary line trees are often the object of theft. A practice that was widespread in the past was to remove every other boundary line tree—the thinking being that these trees are shared between adjoining owners, and the trees left standing simply belong to the “other guy.” In reality, trees that are on the boundary line are common property to both owners, and no one tree should be removed without the consent of both property owners; besides, the boundary line trees are an important historical record of the line placement. Theft can also occur if a logger working on your property doesn’t pay for all of the trees removed. Timber theft can be prosecuted as a “felony” resulting in bigger fines and possible jail time.

There are six things that the landowner can do to protect his or herself against timber theft:

- 1) Maintain your boundary lines.
- 2) Routinely inspect your property and pay attention to activity on adjoining properties.



3) Hire a qualified forester and qualified timber harvester to carry out harvest operations on your property. Check the credentials of the people you choose to work with. Foresters and timber harvesters who have undergone certification in their professions, have at least demonstrated a greater commitment to work quality and ethics. The very best defense against theft is to do business with reputable people.

- 4) Find out where your timber is being marketed and require that mill scale slips be given to you on a weekly basis (this should be in your timber sale contract).
- 5) Know the truckers who are hauling logs and pulp to market from the property. Often times the timber harvester does not own a truck and has to hire independent truckers to move their product.
- 6) Immediately report timber theft to the local police and the regional forestry office of the New York State Department of Environmental Conservation (NYS DEC).

For more information on preventing timber theft, and also the NYS DEC contacts to report theft to:

<http://www.dec.state.ny.us/website/dlf/privland/privassist/theft.html> **and**
<http://www.dnr.cornell.edu/ext/nyfoa/timbertheft/timbertheft.html> ♦

Best Management Practices (BMPs)



Best Management Practices (BMPs) involve nothing more than controlling soil erosion, and protecting streams and water bodies from sedimentation. Erosion of forest soil can occur whenever skid trail, hiking trail, or road building activities removes the humus layer and exposes the mineral soil. Exposed mineral soil, especially on slopes, can rapidly erode during rain events. Soil that is transported by run-off, often ends up in streams or water bodies. This displacing of soil not only damages riparian habitat, but the soil and accompanying nutrients are no longer available for forest plant growth. Deposition of sediment into streams and bodies of water is also a violation of the Clean Water Act and is punishable by fines.

BMPs are recommended practices and devices that can be used in road and trail construction to control erosion. Brook and/or stream crossings (after first obtaining a permit) must be designed so as to reduce or eliminate the chance of dragging mineral soil into the waterway. Skid trails and hiking trails should have water bars in them to divert runoff so that it doesn't run down and erode the trail. Soil that has been exposed on the side banks of road cuts must be protected from erosion. The devices and techniques used to control erosion are inexpensive and can often be made from materials on the site. An excellent booklet describing the use of BMPs, and the construction of BMP devices is: [New York State Forestry, Best Management Practices for Water Quality - BMP Field Guide](#).

For more information on BMPs and the BMP Field Guide, contact the Watershed Agricultural Council's Forestry Program (607)865-7790 or your local New York State Department of Environmental Conservation office. ♦

Generation of Income

There are a number of ways to generate income from a forest property. Most forestland owners are familiar with the concept of growing, harvesting, and selling plants or plant products from their land. Examples include timber (saw logs, pulpwood, firewood), Christmas trees, ginseng, and maple syrup. These income examples, however, do not guarantee predictable yearly returns. A timber harvest within a particular stand will occur – at best – once every ten years. A Christmas tree farm takes a number of years of hard work before the trees are ready for sale. Sugaring seasons are never the same; one year the sugar bush may produce a bumper crop of sap, and the next year it's hardly worth putting the buckets up; and, because we don't live in a perfect world, there is no guarantee that artificial Christmas trees won't become the rage, or that your forest won't burn down, or blow down, or get infested with disease or insects, before it is ready for harvest. Every single year without fail, though, the taxes and bills will come due. ♦



Recreational Leases

Dependable yearly income is – for most forestland owners – more than a luxury or an income bonus, it's a survival necessity. A recreational lease can make it possible for the forestland owner to anticipate a quantifiable yearly income. Recreational leases are binding contracts between two parties – the landowner (lessor) and the person or club (lessee) that is interested in leasing a recreational right. A lease is a legal contract (even if it is verbal), therefore, it is always recommended that you consult a lawyer before entering into a lease agreement. The following items - at a minimum - must be considered in every lease contract:



- o Term: The lease term documents the date the lease begins and the date that it ends. The term length will have differing negotiating extremes for the lessor and the lessee. The lessor, for example, generally wants a short-term lease so as to have the flexibility to adjust to landowner needs and to react to changing market conditions. The lessee, on the other hand, normally prefers a long-term lease so that he or she can predict cost and enjoy the security of not losing the lease. Be aware, the longer the lease term, the more the lease begins to look like a sale of property rights. From a landowners perspective, shorter is better; in fact, one year leases are common.
- o Area: A clause in the lease contract should accurately describe the area involved. It's also a good idea to include a map.
- o Rate Amount: The amount agreed upon for the lease rate must be clearly noted. Don't forget to consider other incidental costs such as an increase in the property tax from the construction of a hunting cabin.
- o Use Limitations: A landowner may want to limit some of the activities that are allowed in the lease, for example, the use of ATVs, or motor boats, or the cutting of vegetation.
- o Compliance with Law: The lease contract should state that the use of the property is limited only to authorized legal activities, and that the lessee and members of the lease will be personally liable for fines or penalties should they break the law.
- o Insurance: There is a law – *The General Obligations Law* – that protects landowners in general from liability. The General Obligations Law takes the angle that landowners are not to be held responsible for the individual safety of people using their property. The law, however, exempts “gross negligence” which opens the way for a court of law to interpret if the landowner indeed was negligent or not. Don't rely on the General Obligations Law alone. The lease contract should state the kinds and coverage limits of insurances required. It's a good idea to have the lessor named as “additional insured.” It's also a good idea to require that insurance cancellation notices be sent to the lessor. Workman's Compensation insurance may be required if, for example, the lessee decides to hire a contractor to build a cabin.

One final point cannot be overstated. A lease contract is a complex legal and binding document. Consult a lawyer to avoid problems. ♦

Income Tax Treatment of Tree Farms

After acquiring a piece of forested land, decisions need to be made as to how the property for income tax purposes should be treated. Decisions made now may affect the profitability of the Tree Farm well into the future. For short-term owners, the decision can be fairly simple. It can be handled as an “investment.” The purchase price and acquisition costs are the “basis” and the revenue from the sale of the timber and the land is “income.” The difference is the capital gain or loss.

For long-term owners, the “investment” option is still viable. Record keeping and reporting is simpler and timber income can still be a capital gain. Deductible expenses have to be reported on Schedule A-Itemized Deductions, deductible only in excess of 2% of the Adjusted Gross Income, for those who itemize. For those who don’t and can’t capitalize the expenses, the deductions are lost. For those who do not itemize, property taxes for the Tree Farm may be capitalized and deducted from the receipts of the next timber sale.

A long-term owner may wish to establish a Tree Farm “business” or “farm” to take advantage of depreciation and deductible expenses. Generally, Schedule F, for Farm is used. Record keeping and reporting is much more complicated. The IRS requires a business to make a profit three out of five years. However, a Tree Farm is considered to be making a profit if the trees are growing, so income producing events can be stretched out over many years. A professionally prepared management plan becomes very important in lending credibility to the enterprise. Not only can the plan provide a financial projection proving the profitability of the growing trees, but the inventory can provide the basis to calculate the depletion units to reduce the tax liability of a timber sale.

In order to take advantage of the deductibility of expenses from any income of a for-profit Tree Farm, the landowner, must prove he is “materially participating” in the enterprise. These are called the “Passive Loss Rules.” Essentially, the landowner must prove that he participated in the management and operation of the Tree Farm for more than 500 hours during the tax year or that the Tree Farmer performed all or most of the management and operations on that farm that needed to be done to enhance the growth (profit) of the trees.

If the landowner is managing his Tree Farm as what used to be called a “hobby farm”, then his expenses can only be deducted from the Tree Farm income for that tax year.

The IRS is constantly on the lookout for “tax farmers,” as opposed to “tree farmers,” so the importance of a management plan and detailed records, perhaps including a diary, cannot be overemphasized.

In the event that the Tree Farm came with mature timber to sell at the time of purchase, the landowner is well advised to sell the timber as soon as it qualifies for long-term capital gain because the dollar amount of the “basis” does not change over time, but the trees grow in volume and stumpage inflates in value. Since the depletion units are supposed to be adjusted at the time of sale, the tax liability will increase. However, this is not to advise you to sell your timber before it’s time. Cutting immature timber outside of a forestry prescription is *never* advisable.

Many accountants, tax preparers, and even IRS agents do not have a good understanding of timber tax code. There are many gray areas and rulings are based on facts and circumstances, and something called reasonableness. There are six IRS foresters in the United States. One is assigned to New York City and covers this area. At least he can speak the language of forestry, if you happen to be audited.

The US Forest Service released the 2011 edition of [Federal Income Tax on Timber: A Key to Your Most Frequently Asked Questions](http://www.fs.fed.us/spf/coop/library/taxpubfaqs.pdf), a quick-reference guide to timber tax laws impacting woodland owners. Complete with the new tax law updates, this publication provides a timely tax reporting information for the 2011 return filing season. To access the publication: <http://www.fs.fed.us/spf/coop/library/taxpubfaqs.pdf>

Further Resources:

- *Forest Landowners Guide to the Federal Income Tax*. Agriculture Handbook No. 718 (157 pages!) - Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20401. Cost \$21.00 (202-512-1800)
- National Timber Tax Website: www.timbertax.org
- Your Forester. ♦

The American Tree Farm System

Many of the topics that have been previously discussed or will be discussed are routinely covered in Tree Farmer, a publication that comes out every two months from the American Tree Farm System. The topics, for example, listed in the November/December 2011 issue of the Tree Farmer were:

- ◇ The Value of Certification
- ◇ Markets Demand More Certified Wood
- ◇ Tracking through Chain of Custody
- ◇ Woodland Security
- ◇ Review Your Management Plan
- ◇ Wildlife Matters



The American Tree Farm System has been approved by the American Forest and Paper Association as being compliant with its “Sustainable Forestry Initiative” - a collection of principles and guidelines which, when followed, promotes sustainable forest management. Members of the Tree Farm System must develop and follow a forest management plan, and the Tree Farms are regularly inspected by qualified “Inspecting Foresters” to monitor compliance. For more information on the Tree Farm Program go to:

<http://www.treefarmsystems.org>

SAVE THE DATE...

Maple Fest: Celebrating the Wonderful World of Maple Syrup

Date: Saturday, March 24

Time: 10:00 a.m. - 2:00 p.m.

Free!

Experience a taste of the “sweet world of maple sugaring” as part of the New York Maple weekend here at CCE’s Agroforestry Resource Center. The event will provide an opportunity to learn about sugar mapling procedures, including demonstrations in our own sugar shack, fun “maple syrup” taste testing, and displays of antique maple sugaring equipment. There will be information about the Greene County Maple Producers Association and an opportunity to buy maple sugar products from these diligent local agriculture producers.

Delicious pancakes with pure maple syrup will also be available for sale in case you get hungry. Plan on joining us to participate in this annual spring ritual in the Northeast representing a few weeks of intense labor that leaves behind a year’s worth of healthy sweetness.

CORNELL COOPERATIVE EXTENSION OF
COLUMBIA AND GREENE COUNTIES
AGROFORESTRY RESOURCE CENTER
& THE WATERSHED FORESTRY PROGRAM OF
THE WATERSHED AGRICULTURAL COUNCIL

Cornell Cooperative Extension
Agroforestry Resource Center
6055 Route 23, Acra, NY 12405
Phone: 518-622-9820
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Cornell Cooperative Extension provides equal program and employment opportunities.

The Forest Stewardship Self-Study Course is a collaboration among Cornell Cooperative Extension of Columbia and Greene Counties, New York City Department of Environmental Protection, U.S. Department of Agriculture's Forest Service and the Watershed Agricultural Council's Forestry Program.

Many thanks to Greater Adirondack R C & D Council and especially Laurel Gailor of Cornell Cooperative Extension of Warren County for their outline and assistance with the Forestry Letter Series.