

**§1138. Recapture penalty**

**1. Assessor determination; owner request.** If the assessor determines that land subject to this subchapter no longer meets the requirements of this subchapter, the assessor must withdraw the land from taxation under this subchapter. The owner of land subject to this subchapter may at any time request withdrawal of any land from taxation under this subchapter by certifying in writing to the assessor that the land is no longer to be classified under this subchapter.

[PL 2021, c. 630, Pt. C, §17 (AMD).]

**2. Withdrawal of portion.** In the case of withdrawal of a portion of the working waterfront land, the owner, as a condition of withdrawal, shall file with the assessor a schedule including the information required under section 1137, subsection 1 showing the area withdrawn and the area remaining under this subchapter.

[PL 2021, c. 630, Pt. C, §17 (AMD).]

**3. Penalty.** If land is withdrawn from taxation under this subchapter, the assessor shall impose a penalty upon the owner. The penalty is the greater of:

A. An amount equal to the taxes that would have been assessed on the land on the first day of April for the 5 tax years, or any lesser number of tax years starting with the year in which the land was first classified, preceding the withdrawal had that land been assessed in each of those years at its just value on the date of withdrawal less all taxes paid on that land over the preceding 5 years, or any lesser number of tax years starting with the year in which the land was first classified, and increased by interest at the prevailing municipal rate from the date or dates on which those amounts would have been payable; and [PL 2021, c. 630, Pt. C, §17 (AMD).]

B. An amount computed by multiplying the amount, if any, by which the just value of the land on the date of withdrawal exceeds the 100% valuation of the land pursuant to this subchapter on the preceding April 1st by the following rates:

(1) If the land was subject to valuation under this subchapter for 10 years or less prior to the date of withdrawal, the rate is 30%; and

(2) If the land was subject to valuation under this subchapter for more than 10 years prior to the date of withdrawal, the rate is 30% reduced by one percentage point for each full year beyond 10 years that the land was subject to valuation under this subchapter prior to the date of withdrawal, except that the minimum rate is 20%. [PL 2021, c. 630, Pt. C, §17 (AMD).]

For purposes of this subsection, just value at the time of withdrawal is the assessed just value of comparable property in the municipality adjusted by the municipality's certified assessment ratio.

[PL 2021, c. 630, Pt. C, §17 (AMD).]

**4. Assessment and collection of penalties.** The owner shall pay the penalties for withdrawal upon withdrawal to the tax collector as additional property taxes. Penalties may be assessed and collected as supplemental assessments in accordance with section 713-B.

If the owner of the property subject to a penalty under this section is unable to pay the penalty assessed under this section, the owner may request and the assessor shall, at the request of the owner, permit a delay in payment of the penalty of up to 2 years.

[PL 2023, c. 671, §5 (AMD).]

**5. Eminent domain.** A penalty may not be assessed under this section if the withdrawal of the parcel is occasioned by a transfer to the State or other entity holding the power of eminent domain resulting from the exercise or threatened exercise of that power.

[PL 2007, c. 466, Pt. A, §58 (NEW).]

**6. Relief from requirements.** Upon withdrawal, the land is relieved of the requirements of this subchapter immediately and is returned to taxation under subchapter 2 beginning the April 1st following withdrawal.

[PL 2021, c. 630, Pt. C, §17 (AMD).]

**7. Reclassification under other current use program.** A penalty may not be assessed upon the withdrawal of land from taxation under this subchapter if the owner applies for classification of that land in another current use program prior to withdrawal and that application is accepted. If a penalty is later assessed under section 581 or section 1112-C, the period of time that the land was taxed as working waterfront land under this subchapter is included for purposes of establishing the amount of the penalty.

[PL 2021, c. 630, Pt. C, §17 (AMD).]

**8. Report of penalty.** Any municipality that receives a penalty for the withdrawal of land from taxation under this subchapter shall report to the State Tax Assessor the total amount received in that reporting year on the municipal valuation return form described in section 383.

[PL 2007, c. 466, Pt. A, §58 (NEW).]

#### SECTION HISTORY

PL 2007, c. 466, Pt. A, §58 (NEW). PL 2021, c. 630, Pt. C, §17 (AMD). PL 2023, c. 671, §5 (AMD).

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