

Why Isn't it Easy to Tax Second Homes?

Testimony to Senate Committee on Finance 04/04/2024

Craig Bolio, Commissioner of Taxes

History

Reports and testimony provided by the Department

- [Secondary residences report](#) under Act 73 of 2021
 - [2023 testimony](#) recapping report
- [2023 testimony](#) on categorizing nonhomestead property
- [Property Valuation and Review 2024 Annual Report](#), current grand list categories
- [Lister Handbook](#) real property highest and best use codes

[From JFO: A presentation about taxing second homes](#)

[Act 68 \(H.480\)](#), Sec. 4, requires two reports

- [Progress report](#) submitted December 2023
- Full report due December 2024

Upcoming Report

Act 68 requires the Department to recommend ways to distinguish between different types and uses of property on the municipal and statewide education grand lists in a report due in December 2024.

- Work by the Department on this report is currently underway. See, [Progress report](#) submitted December 2023.
- We have contracted with the International Association of Assessing Officers (IAAO), an expert nonprofit, educational, and research association, to help research for this report.

Why Isn't Taxing Second Homes Easy?

- What is a second home?
 - A wealthy, out-of-state resident's big house is easy to say
 - What about:
 - An uninsulated hunting camp worth \$75,000?
 - An uninsulated camp on a lake worth \$1 million?
 - A farmhouse on a large farm that is rented 9 months a year but used as a secondary residence for the summer?

Why Isn't Taxing Second Homes Easy?

- Property in Vermont is classified as either Homestead or Nonhomestead.
 - **Nonhomestead does not mean second home.**
 - Nonhomestead means anything that is not exempt and not a declared homestead, which includes factories, apartment buildings, office buildings, hunting camps, etc.
- Secondary residences aren't distinguishable in the grand list.
 - There are 15 different grand list categories, nine of which are potentially residential usage – and 13 of which get Homesteads filed!
 - From there, properties are flagged as homestead if the owner files a Homestead Declaration at the beginning of the year

Why Isn't Taxing Second Homes Easy?

Data from 2022 Grand List

CATCODE	Short Code	Category	Use Class	Count	HS	NHS
1	R1	Residential with fewer than 6 acres	Residential	157,924	25,801,857,979	13,244,580,025
2	R2	Residential with 6 or more acres	Residential	55,680	11,743,860,203	7,485,456,605
3	MHU	Mobile home un-landed	Residential	9,757	152,417,905	112,619,805
4	MHL	Mobile home landed	Residential	10,676	755,455,395	383,791,539
5	S1	Seasonal home with fewer than 6 acres	Residential	9,344	120,263,457	1,469,846,970
6	S2	Seasonal home with 6 or more acres	Residential	5,699	61,024,788	820,677,426
7	COMM	Commercial	Commercial	14,616	87,315,904	9,525,986,291
8	CMA	Commercial Apartments	Commercial	2,308	16,378,726	1,907,857,401
9	IND	Industrial	Industrial	890	1,083,800	1,328,448,528
10	UE	Utility Electric	Commercial	1,141	-	3,406,302,976
11	UO	Utility Other	Commercial	146	-	379,791,156
12	FRM	Farm	Mix	2,551	457,029,664	405,543,440
13	OTH	There is variation across municipalities about how this field is used. Some use it for condos, lakefront property, airplane hangars, timeshares, or other properties where the market expresses a value different than the other grand list categories	Mix	23,908	1,779,473,774	4,565,273,947
14	WOOD	Woodland	Land	5,781	11,164,020	371,550,235
15	MISC	Miscellaneous	Land	27,063	84,696,055	1,828,312,149

Why Isn't Taxing Second Homes Easy?

- Defining second homes in statute is key, but discussion is often reliant on “knowing it when we see it”
- How to identify them once defined is challenging
- Compliance is tricky with any option

Why Isn't Taxing Second Homes Easy?

- Act 73 Option 1:

Tax Department uses existing Grand List data, homestead declarations, and landlord certificates to identify *potential* second homes. In this case, a second home is any residential property where neither a homestead declaration nor a landlord certificate have been filed on the property

- Strengths:
 - Simple, no new filing requirement
 - No added burden on local officials
- Weaknesses:
 - Low confidence on estimates – not a great basis by which to tax differently
 - May not reflect Legislature's intent – what about the farmhouses, ski condos, or camps?

Why Isn't Taxing Second Homes Easy?

- Act 73 Option 2:

Legislature defines what a secondary residence is which would likely include a “use” based component such as time spent in the home, then local Listers flag those properties in the Grand List

- Strengths:
 - Definition is created by the Legislature
 - Data would reflect Legislative intent
- Weaknesses:
 - Huge added burden on listers to monitor how people are using their properties
 - Less accurate data

Why Isn't Taxing Second Homes Easy?

- Act 73 Option 3:

Legislature creates a statutory definition and filing requirements, then owners of second homes would need to annually file paperwork with their towns or the State indicating that the property is a second home

- Strengths:
 - Definition is created by the Legislature
 - Data would reflect Legislative intent
 - Most accurate data *with* compliance
- Weaknesses:
 - Most challenging compliance, second homeowners may not have any interaction with state tax department, doing it locally adds to the burden of local officials

Constitutional Constraints

Courts have long recognized that state legislatures have broad latitude in creating classifications and distinctions in their tax statutes. States may divide different kinds of property into classes and assign them different tax burdens. However, these powers are not unlimited. The U.S. Constitution places limits on regulating citizens from other states.

- A State cannot discriminate in favor of its citizens or against the citizens of another state through its tax laws.
- Divisions and classifications in state tax statutes cannot be arbitrary or capricious.

Vermont courts have found that some discrimination in taxing is inevitable and, unless it is based on a suspect class such as state of residence, any distinction only requires a rational basis to be valid under the Vermont Constitution. “Rational basis” means:

- Any tax classification must bear a reasonable relationship to the purpose of the tax and be equally and fairly applied among like classes of taxpayers.

Constitutional Constraints: Key Takeaways

When considering any property classification structure:

- Vermont cannot discriminate in favor of its citizens or against the citizens of another state through its tax laws.
- Divisions and classifications must bear a reasonable relationship to the purpose of the tax and be equally and fairly applied among like classes of taxpayers.
 - Classifications cannot be arbitrary or capricious.
- Saying only second residences *owned by non-residents* get a higher tax rate is probably a problem

Does Anybody Else Tax Second Homes?

Key question to answer in our December report

Preliminary research indicates a couple of local jurisdictions have “vacancy taxes”

Washington, DC: <https://otr.cfo.dc.gov/page/otr-vacant-real-property> Owners need to register their properties.

Oakland: [City of Oakland | VPT Vacant Property Tax \(oaklandca.gov\)](https://www.oaklandca.gov/vpt)