STATE OF MAINE
MAINE REVENUE SERVICES

PT102

Maine Property Tax Law

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FOREWORD

This publication is designed to serve two purposes. The first is to provide students of property tax law with an authoritative source of information concerning property tax administration. The second is to provide assessors with a reliable resource on Maine property tax law and administrative procedure.

Because the Maine Legislature amends tax law every year, readers of this text should consult all subsequent publications issued by the Property Tax Division to ensure a complete, updated source of reference materials. Updates of many publications and annual summaries of law changes are available on the Property Tax Division website, *www.maine.gov/revenue/propertytax/*.

This text begins by introducing the origins of United States law and the basic functions and principles of our legal system. The definitions and subsequent judicial interpretation should enhance the readers' insight and comprehension of Maine tax law and its practices.

Appendix A provides an alphabetically arranged list of the court decisions noted in this text. Appendix B includes summaries for the cases. The cases were selected for their significant contribution to administrative practice. Appendix A includes citations for the cases.

The Property Tax Division welcomes comments and suggestions from users of this guide for subsequent revisions of this material. Send your comments to prop.tax@maine.gov.

KEY TO READING LEGAL CITATIONS

Throughout this manual, references are made to legal sources such as court cases, statutory provisions, legislative enactments, and opinions of the Maine Attorney General. You should consult these documents to develop basic legal research skills as well as a deeper appreciation for the dynamics of the legal process. There are a variety of online services, both free and subscription-based, that provide access to legal sources.

Statutory references. The most frequently used type of legal reference in this text is the statutory citation. Laws enacted by the Maine Legislature are referred to as the Maine Revised Statutes (abbreviated as "M.R.S." in citations). You may also see references to the Maine Revised Statutes Annotated, or "M.R.S.A.", which is the official print version of the laws and includes notes and certain relevant court cases. For the purposes of this manual, we refer generally to the Maine Revised Statutes.

Laws are divided into major subject areas called Titles. For example, Title 10 covers laws affecting commerce and trade; Title 29-A pertains to motor vehicle law; Title 30-A is the body of law concerning municipal government; and Title 36 contains the tax laws. Titles are divided into parts that, in turn, are divided into chapters and subchapters.

For example, Title 36, Part 2, Chapter 102, Subchapter 5 is the logical sequence in arriving at Subchapter 5 (Assessing Standards) that is included in Chapter 102 (Property Tax Administration) of Part 2 (Property Taxes) of Title 36 (Taxation).

Part, chapter, and subchapter heading references yield to the uniquely numbered sections within any title that, in turn, may be divided into subsections, paragraphs, subparagraphs, divisions, and subdivisions. For example, the law requiring business equipment to be depreciable under the Internal Revenue Code to qualify for exemption under the Business Equipment Tax Exemption program is located at Title 36, Part 2, Chapter 105, Subchapter 4-C, section 691, subsection 1, paragraph F, subparagraph 2, division a. The statutory reference would be cited as follows: 36 M.R.S. § 691(1)(F)(2)(a), where "§" is the symbol for "section." This is the most common form of statutory citation. Since section numbers are all unique within a title, a standard statutory reference excludes the chapter and subchapter numbers.

A federal statute is cited similarly to a Maine statue, with a reference to the U.S.C. (United States Code) and including the title and section. For example, 42 U.S.C. § 1983, referring to section 1983 in Title 42 of the United States Code, or, more particularly, the federal Civil Rights Act of 1871. Note that the federal tax statutes, found in Title 26 of the United States Code, are referred to as the Internal Revenue

Code, or I.R.C., and are often cited in an alternative format. For example, a citation to the definition of "gross income" under the federal income tax could be to either 26 U.S.C. § 61 or I.R.C. § 61—both citations are considered correct.

<u>Legislative enactments</u>. Another commonly used citation appears in the following form: P.L. 2015, c. 353. This refers to the Public Laws of 2015, chapter 353; which removed the 180-day requirement for certain veterans to be eligible for the property tax exemption for veterans (36 M.R.S. § 653(1)(C)). Every regular session of the Maine Legislature results in several new laws. Each Legislature begins in an odd-numbered year and lasts for two years. Ordinarily, there are two sessions to each Legislature, the first beginning in January of the first year and the second beginning in January of the following year. The example cited above was the three hundred fifty-third Public Law recorded by the Secretary of State, as enacted by the 127th Legislature, which convened in January 2015. The assignment of consecutive chapter numbers uniquely identifies each legislative enactment. Note that the year included in a citation to a Public Law refers to the year in which that legislature first convened and not the year in which the law was passed. For example, the correct citation to the public law which created the Homestead Exemption is P.L. 1997, c. 643, even though the bill was not enacted and signed by the Governor until April 1, 1998. Public Laws are annually published in volumes entitled Laws of Maine.

Public Laws (P.L.) are enactments that have relevance to the public at large, or a major segment thereof. In addition to Public Laws, the Legislature also passes laws that have relevance to specific, limited segments of the population. These are called Private and Special Laws (P. & S. L). For example, a bill that would allow a specific municipality to vote to secede from one county to become part of another county would be enacted in the form of a Private and Special Law. In addition, the Legislature also passes Resolves that generally are acts that relate to a limited purpose and do not require amendments to general law. For example, the annual legislative resolve: Authorizing the State Tax Assessor To Convey the Interest of the State in Certain Real Estate in the Unorganized Territory allows the State Tax Assessor to sell foreclosed property. Resolves neither amend existing law nor create new law. Finally, simple error corrections incorporated by the Revisor's Office, such as renumbering two sections with the same number enacted during the same legislative session, are noted in the Revisor's Report (R.R.).

<u>Court cases.</u> Court cases are identified by the name of the case, such as <u>Dillon v. Johnson</u>. Cases are generally cited in the format <u>Plaintiff v. Defendant</u>; the plaintiff is usually the party who initiated the suit. Appendix B contains summaries of decisions rendered by the Maine Supreme Judicial Court, also known as the Law Court, that are referenced in this textbook. There are no references in this text to Superior Court decisions. Superior Court decisions have persuasive authority, meaning they may provide helpful guidance, but are not binding upon other courts. Decisions of the Maine Law Court, however, are binding on all lower state courts until and unless they are overturned by future rulings of that court or subsequent legislation.

Cases issued by the Maine Law Court prior to 1966 were published in the Maine Reports. For example, a citation to the case of Norridgewock v. Walker, contained in the appendix, would be 71 Me. 181 (1880), meaning the decision was issued in 1880 and begins on page 181 of section 71 of the Maine Reports.

Since 1966, the Atlantic Reporter has been the official reporter for state supreme court decisions issued by states in the Northeast, including the Maine Law Court. The correct citation to a case such as the Dillon v. Johnson case above would be 322 A.2d 332 (Me. 1974), which means that the case begins on page 332 of section 322 of the Atlantic Reporter, Second Series (A.2d), and was issued by the Maine Law Court in 1974.

In addition to a citation to the Atlantic Reporter location, Law Court cases issued after January 1997 will also include a citation to the public domain version of the decision, which is available on the Judicial Branch's website. For example, Cassidy Holdings, LLC v. Aroostook County Commissioners, et al, which is in the appendix, includes the citation 2023 ME 69, indicating it was the sixty-ninth decision issued by the Law Court in 2023.

Complete, up-to-date sets of the Maine Revised Statutes Annotated are available in most libraries across the state, and current statutes are also available on the Legislature's website. The online statutes contain the legislative history of section changes, but do not contain the summary of court cases (Notice of Decisions). The Laws of Maine, Maine Reports, and the Atlantic Reporter are available in the law library of most county buildings, court libraries, and at the Maine Law and Legislative Reference Library in the Capitol Building in Augusta. In addition, Law Court cases issued after 1997 are available on the Judicial Branch's website, and some (but not all) Maine Superior Court decisions issued after 2000 are available on the website of the University of Maine School of Law.

While property tax in Maine is largely a product of state law and state court decisions, there are occasionally circumstances where a federal court decision may be important, as discussed later in this manual. Citations to United States Supreme Court cases are to the United States Reports; for example, the Tyler v. Hennepin County case would be cited as 598 U.S. 631 (2023) indicating it was issued in 2023 and begins on page 631 of the section 598 of the United States Reports.

<u>Administrative Rules.</u> Administrative rules are developed by Executive agencies and outline how the agency will administer a given program or statutory provision. Rules are contained in the Code of Maine Rules, or "C.M.R.". An example of a formal citation to an administrative rule is 18-125 C.M.R. ch. 205, § 2, which identifies section 2 of Maine Revenue Services' Rule 205 covering the certification of assessors. The first set of digits in the citation identify the department and agency; in this example, "18" identifies the Department of Administrative and Financial Services and "125" denotes Maine Revenue Services. A complete set of current rules is available for public use in the office of the Maine Secretary of State, which is responsible for the codification and publication of Maine's administrative rules. Rules are available online on the Secretary of State's website; Maine Revenue Services' rules are also available on the MRS website. In this text, the format for citing rules will be less formal. The above rule and section, for example, will be referenced either as MRS Rule 205, § 2 or Rule 205, § 2.

<u>Opinions.</u> Finally, the discussion of a statutory provision in this manual may occasionally include one of the following two types of citations: either <u>Opinion of the Justices</u> (1945) or <u>Opinion of the Attorney General</u>, March 4, 1980. These would indicate that a statutory interpretation is based on an opinion of the Justices of the Maine Law Court or on an opinion of the Maine Attorney General delivered on the date indicated.

CHAPTER 1

INTRODUCTION TO UNITED STATES LAW AND MAINE LAW

Constitutional Law

The United States Constitution is designed to reflect two major elements in the structure of American government. The first is a separation of powers into three branches of government: (1) a legislative branch to enact the laws, (2) a judicial branch to interpret the laws, and (3) an executive branch to administer the laws.

The Maine State constitution is structured in the image of the U.S. Constitution. Not only does this mean that the Maine Constitution mirrors the separation of powers described above, but it also means that the Maine State Constitution establishes how law may be enacted to ensure and protect an individual's rights as a citizen of a state and a nation. The power of taxation is an essential attribute of that power, but is limited by certain requirements or prohibitions in both the U.S. and Maine Constitutions.

Statutory Law and the Legislative Process

The principal source of law, following the constitution, is statute. Modern statutory law is characterized by an emphasis on detail and extensive use of definitions. It is designed to address the many situations in everyday relationships between citizens, government, and businesses. As legislatures attempt to address the problems of a dynamic and changing society, energized by the general and specific interests of constituencies, state law is constantly being revised.

As noted above, complete, up-to-date sets of the Maine Revised Statutes Annotated are available in most libraries across the state, and current statutes are also available on the Legislature’s website and through other online services, both free and subscription-based. Different versions of the Maine statutes may include additional information beyond just the statute, such as the following.

Historical and Statutory Notes. Historical and Statutory Notes identify the derivative source of each section from previous revisions, thereby linking the current law with its origin through the progression of revisions. These historical notes also include notations of amendments citing chapter and year, and often identify words and phrases that have been added or deleted.

Cross References. Cross References provide references to related laws and constitutional provisions.

Court Rules. This section includes references to procedural rules.

Law Review Commentaries. Law Review Commentaries include a list of published articles in law journals.

Library References. This section lists citations to the American Digest System, the Corpus Juris Secundum and Westlaw research.

Research References. Other research articles not included in one of the above areas.

United States Code Annotated. This section includes appropriate sections of the U.S. Code.

Notes of Decisions. A comprehensive array of pertinent court cases is logically organized by topic under the heading Notes of Decisions. More than anything else, this annotation feature, is what distinguishes Maine Revised Statutes Annotated from the Maine Revised Statutes, which lists only the actual statutory laws. Selected Opinions of the Justices and Opinions of the Attorney General are also included in the annotations.

The inside back cover of each paper volume contains a cumulative pocket supplement designed to keep the Maine Revised Statutes Annotated completely up to date as changes in the law occur.

The organization of the statutes is designed to separate ideas by structuring provisions with a uniform numbering system using the following mechanical form:

Title (for example: 36 M.R.S. for Title 36)
Part
Chapter (c.)
Subchapter
Section (§)
Subsection
Paragraph (¶)
Subparagraph
Division
Subdivision

Traditional citations list the Title and the section, with smaller segments included as necessary. Part, chapter, and subchapter are usually not included. For example, the citation 36 M.R.S. § 1(2)(C)(4)(e)(vi):

36 M.R.S.	means Title 36
§ 1	means section one
2	means subsection two
C	means paragraph C
4	means subparagraph four
e	means division e
vi	means subdivision six

An unnumbered or unlettered portion of text that is blocked off (the text is indented the same as the previous subunit, but the first line is not indented) relates to the preceding subunit (numbered or lettered portion of statutory text); an unnumbered or unlettered portion in which only the first line is indented pertains to the entire section.

The legislative process is formally initiated when a bill is introduced or filed by 1) a legislator; 2) a committee charged with a specific study (for example, The Speaker's Select Committee on Property Tax Reform, 1998); or 3) a specified number of initiative petitioners. Additionally, the Speaker of the House of Representatives or the President of the Senate may file a bill on behalf of the Governor or the Chief Justice of the Maine Supreme Judicial Court. A bill is a draft of a proposed act of the Legislature that amends an existing law or creates a new law. The legislative staff assists in drafting bills to ensure that the proposal properly addresses the intent of the sponsor while complying with the required format for legislative documents.

Each bill is filed with both the Clerk of the House and the Secretary of the Senate who recommend that the bill be referred to one of the Joint Standing Committees, each comprised of ten members of the House and three members of the Senate. The number of joint standing committees changes from year to year. In 2024, there were 22 committees, including the Joint Standing Committee on Taxation, which is responsible for hearing most bills related to property taxation. The bill is then recorded on the Advance Journal and Calendar, a copy of which is placed on the desks of the members of both houses prior to the start of each day's session. Each house then votes on the referral recommendation (membership may decide to refer a bill to a Joint Standing Committee other than the one recommended).

After a bill is received by committee, a public hearing on the bill is scheduled and notice of the hearing is published in major newspapers across the state under the heading "Legislative Notices." Notification is also distributed through email to those subscribed as interested parties. Hearings are intended to provide members of the public an opportunity to express views and opinions on the bill in testimony before the committee. Testimony may be provided in person or be submitted in writing. During a hearing, testimony is generally grouped and presented as in support, in opposition, or neither for nor against the bill. Following the public hearing, the committee will consider the bill in a work session, which may occur on the same day as the public hearing or at a subsequent meeting of the committee. Unlike at the public hearing, members of the public are generally not allowed to participate in a work session, unless requested or invited by the committee.

After considering the bill in a work session, the committee will vote on the bill and file either a unanimous or divided report with one of the following recommendations:

1. Ought to Pass

2. Ought Not to Pass (if this recommendation is unanimous, the bill is placed in the legislative files with no further action unless 2/3 of both houses vote for reconsideration)

3. Ought to Pass with Committee's Amendment

4. Ought to Pass in New Draft

5. Leave to Withdraw (recommendation that the bill be withdrawn by the legislator who introduced it).

Divided reports consist of either majority and minority reports or two evenly divided reports.

The bill is read first before the legislative body in which it originated. Two readings are required in the House and two in the Senate. First and second readings are on successive legislative days. Most bills that receive unanimous ought-to-pass or ought-to-pass with amendment reports are placed on the Special House Consent Calendar for two legislative days and considered passed to be engrossed (printed in final form) unless, on one of those days, a member of the House wishes to take the bill from the Calendar for consideration.

Each house votes on the bill after the last reading. If the House and Senate disagree, the bill may be returned to committee or referred to a Conference Committee that is set up to compromise differences. The bill, (with amendments if necessary), is then returned for consideration by both houses. If both houses approve the bill, it is printed as it would appear as a state law.

After engrossment, the bill, now in its final form, is returned to each house for final passage, a process called enactment. The bill must be signed by both the Speaker of the House and the President of the Senate. However, certain bills that affect state revenues or expenditures, including most bills related to taxation, are instead placed "on the table," or set aside to be considered once all other legislation requiring funding has been voted on. Toward the end of a legislative session, the Joint Standing Committee on Appropriations will meet and consider all these bills and determine which bills should be funded and therefore finally enacted. If the Committee approves of the bill without amendment, it is sent to the Senate for approval and final enactment. If the bill is approved with an amendment, the bill must be approved by both houses.

Following enactment, the bill is sent to the Governor for consideration. The Governor has the option to:

1. Sign the bill into law
2. Allow it to become law (after ten days) without signing it
3. Veto it (a veto may be overridden by a 2/3 vote of the members present in each house)
4. If the Legislature adjourns within ten days before the Governor acts, the governor may:
   a) sign the bill into law
   b) refer the bill to the next session of the same Legislature; or
   c) refuse to sign the bill with two possible results: either the bill automatically becomes law unless returned within three days of the convening of the next meeting of the same Legislature, or if the legislative session ends before the three-day period expires then the bill fails to become enacted into law (this is known as a "pocket veto").

Enacted bills and Resolves become effective 90 days after the Legislature adjourns unless another date is specified. Emergency legislation (which requires 2/3 approval of the entire membership of both houses) becomes effective when approved by the governor or on the date specified.

The Legislature is also the singular source of proposals to amend the Maine Constitution. Article X, section 4 provides that an amendment be initiated when approved by two-thirds of both houses. These Constitutional Resolutions do not require the approval of the Governor, but they do require the approval of the voters at referendum.

A publication entitled *Path of Legislation in Maine* is available on the Legislature's website and provides an excellent source of information on this topic.

Judicial Law (Case Law)

The task of determining the validity and meaning of legislation is a judicial function and, in that capacity, the court's interpretation of a statute can certainly shape the bounds of the law. The function of the court is to interpret legislation, although there is no universal agreement on the limits of this authority. Judicial authority also includes the power to strike down a statutory provision that is deemed to be unconstitutional, to clarify or expand upon the meaning of a vague statute, as well as to overturn a prior ruling of the court.

The primary role of a judicial decision is to define and dispose of the controversy between the parties currently before the court. However, the way the court resolves a dispute is a matter of great relevance because a judicial decision can establish a precedent that may serve as the basis of decision for subsequent, similar cases. Judicial reasoning rests heavily upon not only precedent, but also analogy, the examination of a situation in comparison to the way similar situations are currently regulated. The accumulated body of judicial decisions and customs is referred to as "case law" or "common law," as distinguished from law contained in statutes, i.e., "statutory law." The common law relies heavily on the judicial tenet known as "stare decisis," which generally requires courts to adhere to the precedent from prior cases when deciding current cases.

For the court to hear a case, three criteria must be met: jurisdiction, justiciability, and standing. Jurisdiction encompasses the court's authority, capacity, power, or right to act. For example, the district court would not generally have jurisdiction to rule on a petition for adoption, because Maine law gives exclusive jurisdiction on that type of case to the probate courts. Justiciability and standing are related issues and pertain to the question of whether a certain dispute may be examined and decided by a court. For example, the Maine Law Court does not, except in limited circumstances, provide advisory rulings—there must be an actual dispute between two parties for the court to decide the case. Similarly, while courts may interpret and decide how to apply a particular statute, they will not rule on the wisdom or policy of a statute, which is strictly a legislative function. The courts will also decline to rule on cases if the parties don't have standing (legal entitlement to bring a case before the court); i.e., if the party is not aggrieved or does not allege a personal stake in the outcome of the controversy.

Maine's Constitution provides that, "The judicial power of this State shall be vested in a Supreme Judicial Court, and such other courts as the Legislature shall from time to time establish" (article VI, section 1). Maine's Supreme Judicial Court, established in 1820, consists of a Chief Justice and seven associate justices holding office for seven-year terms.

The Supreme Court hears appeals of Superior Court decisions in cases involving property taxation. Those Superior Court rulings are handed down in what is described in Chapter 11 as the third step in the statutory appeal procedure. The Superior Court created by the Legislature in 1929 consists of sixteen judges who hear cases individually in each of Maine's sixteen county seats on a rotating schedule.

Property taxation is a product of state law and most cases on property tax in Maine are heard and decided by Maine's state courts as described above. However, there are limited circumstances where a United States federal court may hear a case related to property tax or may decide a case that affects property taxation in Maine. For Example, Tyler v. Hennepin County, discussed later, involved the United States Supreme Court determining that a Minnesota law relating to excess proceeds from the sale of tax-acquired properties violated the U.S. Constitution. That Supreme Court decision played a major role in Maine's Legislature deciding to amend the Maine law on the sale of tax-acquired properties during in 2023 (P.L. 2023, c. 358).

Administrative Rules

It is not uncommon for the Legislature to address an issue by enacting a statute in which the wording is necessarily broad and general. In doing so, the Legislature may exercise its prerogative to delegate detailed decision-making authority to career professionals within the Executive Branch. Although recent trends indicate a tendency to limit the administrative authority of State agencies through greater specificity in legislation, the policy-implementation function of Executive Branch agencies frequently requires clarification and definition of legislative intent.

To encourage public participation in the administrative rule-making process, the First Regular Session of the 108th Legislature enacted the Maine Administrative Procedure Act (P.L. 1977, c. 551) that established minimum standards for the adoption and implementation of administrative rules. To ensure that an adopted rule carries the weight of law, detailed procedures must be strictly followed (5 M.R.S. § 8001 et seq.).

In response to a need for an administrative guideline, a proposed rule (or rule amendment) is drafted in an established format. Newspapers publish a consolidated advertisement that provides "Notice of Agency Rule-Making Procedures;" in each case, the proposed rule is summarized, the schedule for the public hearing (if any) is announced, instructions for submission of comments are specified, and an agency contact person is identified. In addition to this public notice, interested parties, who, upon request, have been placed on a mailing list, are notified directly by the agency of the proposed rule. Once the goals of public access and input have been met, an agency's decision to adopt a rule must be approved by the Office of the Attorney General. At the time of adoption, the agency must file a statement with the Secretary of State explaining the factual and policy basis for the rule and include the rationale for the inclusion or the refusal to include suggestions made by the public.

A petition submitted to a state agency by at least 150 registered voters of the state to adopt or change a rule would require that agency to commence rule-making proceedings within 60 days. Standard forms are available from the Secretary of State.

Legal Opinions

Because statutory law is sometimes written in broad, perhaps even ambiguous, terms, questions frequently arise from specific situations relating to the application of the law.

Sometimes these questions may warrant a legal opinion. In such instances, government has two options. In some cases, Maine's Attorney General may be called on by either the executive or the legislative branch of government to provide a legal opinion (5 M.R.S. § 195). This written opinion of the Attorney General usually takes the form of a legal brief which: 1) states the facts of the situation; 2) phrases the legal questions which must be answered (after citing the appropriate legal reference, these questions are usually constructed in such a way as to elicit a yes or no response); 3) answers the question; and 4) supports the answer with the appropriate legal reasoning.

As a second option, but only under carefully specified conditions, the governor, the Senate, or the House of Representatives may solicit an advisory opinion from the justices of the Supreme Court (article VI, section 3). Such decisions are without precedential value, and the rule of "stare decisis" (a decided precedent) is not applicable. The opinions emanate from individual justices, and not from the court. Opinions are limited to important questions of law and solemn occasions and are published in the Atlantic Reporter in conjunction with the decisions of the Court.

Rules of Statutory Construction

When legal authorities are faced with interpreting statutory law or constitutional provisions, they look primarily to the language of the law. The common meaning of words and phrases applies unless the result is inconsistent with the plain meaning of the statute (1 M.R.S. § 72(3)). If the language is clear and supported by consistent judicial interpretation, there is no need to look beyond the language of the statute. Statutory law should be read according to the natural and most obvious meaning of its language without resorting to subtle or forced constructions for either limiting or extending their operation unless there is a clear record of legislative intent to the contrary.

Legislative intent, if determinable through the language of a statute, must always prevail in analyzing the effect of a statute and any conflict in resolving the meaning of a law should be resolved in favor of legislative intent. The court's role is to decipher apparent legislative intent even though the result may reveal an error of judgment or oversight by the Legislature (Canning v. State Dept. of Transportation). In determining intent, the court may look to legislative history of a statute, the statement of fact on the legislative document, the policy objectives of the Legislature and the entire body of related law. However, post-enactment commentary is not legally recognized as legislative history.

Statutes are not construed contrary to the overall purpose intended by the Legislature if it is possible to interpret them favorably in the context of the entire piece of legislation. Any restrictions or limitations not specifically included in a statute will not generally be added by judicial interpretation, especially if the restriction or limitation is prejudicial to the public good (Lewis v. Robbins).

Legislation enjoys a presumption of constitutionality and law is declared unconstitutional only when there is overwhelming certainty as to its legal defect. Although the courts will make every effort to interpret a statute with a consideration to the purpose or policy goals of the Legislature, such considerations have no weight or merit in deciding issues of constitutionality.

There is also a presumption that the Legislature did not intend unreasonable consequences, nor results contrary to the public interest. (Schwanda v. Bonney). This presumption favors, for example, the validity of municipal ordinances and proceedings.

When statutes that impose a tax burden on citizens are susceptible to more than one interpretation, the court will generally interpret the statute in a light most favorable to the citizen (Blaney v. Shapleigh). Furthermore, the statutory procedures for collection of taxes are subject to a strict construction rule; or the idea that the text of a statute should be applied as it is written. Full compliance with the procedures for enforcing collection of a tax are required and essential to the validity of the process of perfecting collection of tax debts.

The provisions of a statute are generally severable. Severability means that if any provision of a statute is invalid, or if the application of that law is invalid, such illegality does not affect other provisions of law (1 M.R.S. § 71(8)). When an invalid portion of a statute is separable from a valid portion, the invalid portion may be rejected, and the valid portion retained. For example, the partial unconstitutionality of 36 M.R.S. § 653 providing for a veterans' tax exemption contingent on a ten-year residency requirement did not necessarily result in defeating the whole legislation, even though the legislation did not carry a severability clause (Lambert v. Wentworth). A statute that does not specify an effective date is assumed to apply only prospectively from the date it becomes law, and the courts will imply retroactive intent only when a law is clearly inoperative except for a retrospective application.

Whenever two statutes, enacted at different times, are so mutually inconsistent that they cannot effectively stand together, then this is viewed as a legislative intention that the last-enacted statute should repeal the first. The first-enacted statute is thus repealed by necessary implication. Although there is a presumption against repeal by implication, the court has ruled that when an earlier statute clearly annuls the entire purpose of a later statute covering the same subject matter so that the retention of the former could not have been a reflection of the most recently manifested legislative intent, then the earlier statute must be regarded as repealed by implication.

CHAPTER 2

MAINE CONSTITUTIONAL PROPERTY TAX PROVISIONS

Historical Overview

The Constitution of the State of Maine contains several broadly stated guidelines pertaining to taxes in general and property taxes in particular. This chapter examines the importance and meaning of these provisions, which serve as the legal foundation for property taxation in Maine.

Maine became the 23rd state to join the Union when it was admitted by Congress on March 15, 1820. The Act of Separation between Maine and Massachusetts provided that the laws in force in Maine at the time would remain in force until altered or repealed by Maine's Legislature, except for those laws which were:

> *"inconsistent with the situation and condition of said new State, or repugnant to the constitution thereof."*

With that, Maine embarked on its property tax administrative life with a body of Massachusetts law. In 1820, the Maine Constitution contained three tax-related sections, article I, section 22, article IX, section 7, and article IX, section 8. These three sections remain today.

Article I, section 22 currently states:

> *"No tax or duty shall be imposed without the consent of the people or of their representatives in the Legislature."*

Article IX, section 7 currently states:

> *"While the public expenses shall be assessed on estates, a general valuation shall be taken at least once in 10 years."*

Article IX, section 8 currently states:

> *"All taxes upon real estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof."*

The concept of just value discussed in this section is particularly fundamental to property tax equity. The courts have interpreted just value to mean market value, and the Legislature has enacted a statutory definition which attempts to identify important elements to be considered in determining just value. 36 M.R.S. § 701-A.

The just value provision in article IX, section 8 was amended in 1876 to include personal property. Exceptions to this provision have occurred only three times. In 1970, Maine voters approved an amendment allowing the Legislature to establish current use valuation laws for farm, forest, open space, game management, and wildlife sanctuary lands. In 1978, voters allowed the Legislature to approve an alternate cost sharing formula for school districts that apportioned the tax burden among jurisdictions on other than just value. In 2005, the voters approved that the Legislature could establish current use valuation laws for land that is used for, or supports, commercial fishing activities.

The first and third exceptions to just value relate to current use valuation in the case of certain lands. Current use valuation means that land is valued based on the price the land could be sold for in an arms-length transaction if the land was restricted to its current use. The 1972 Maine Tree Growth Tax Law , for instance, provides for the valuation of qualifying forest land on a productivity basis. These values are determined by the State Tax Assessor in accordance with statutory guidelines. Reimbursements are provided to municipalities for a portion of the revenues lost based on the reduced value.

The other classes of land that are granted the benefits of current use valuations are covered under the Farm and Open Space Tax Law which has evolved from its original enactment in 1971 to function largely as two distinct programs. Values for land classified under this law are determined by the local tax assessor, using guidelines established by law. In administering the Tree Growth Tax Law, the Farm and Open Space Tax Law, and the Working Waterfront law, the assessor must decide whether land is eligible for classification. Each law levies a penalty for the withdrawal or change of use of land. While located in statute, the penalties have their foundation in, and are required by, the Constitution, which requires a minimum penalty under the programs. (Article IX, section 8).

Although the exceptions to just value are limited to these three types of property, Maine law does allow for exemptions, or reductions, to the just value of a property. The Maine Supreme Court in a 1945 advisory opinion explained the Legislature's latitude concerning the constitutional requirement of equal apportionment and assessment. The full power over taxation is vested in the Legislature, including: 1) power of determining upon what kind and classes of property taxes shall be imposed; and 2) what shall be exempt from taxation. The power of taxation is limited only by the Maine Constitution (Opinion of the Justices (1945)). In other words, property tax exemptions can be provided by statute, in addition to those few required by federal law or the Articles of Separation. It is interesting to note that until 1845, Maine law merely listed those categories of property to be taxed. Subsequently the law has required general taxation, with enumerated exemptions.

Article IX, section 8 of the Constitution was amended in 1915 to allow the Legislature to apply a different tax rate on intangible personal property. In 1961 the Legislature amended the definition of personal property so that it no longer included intangibles; which are today excluded from taxation.

In addition to the alternate cost sharing formula for school districts, another related constitutional provision was approved by the voters in 1978. Article IV, section 23, reads:

> *Municipalities reimbursed annually. The Legislature shall annually reimburse each municipality from state tax sources for 50% of the property tax revenue loss suffered by that municipality during the previous calendar year because of statutory property tax exemptions or credits enacted after April 1, 1978. The Legislature shall enact appropriate legislation to carry out the intent of this section.*

The driving force behind this amendment was the Maine Municipal Association. Because reimbursement was fixed at 50%, the state and the municipalities equally shared the burden of exemption. In 1984, however, the provision was amended to require reimbursement from tax sources for <u>not less than</u> 50% of the property tax revenue loss suffered by municipalities.

Similarly, article IX, section 21 requires that the State reimburse municipalities for a portion of certain administrative and other costs:

> *State mandates. For the purpose of more fairly apportioning the cost of government and providing local property tax relief, the State may not require a local unit of government to expand or modify that unit's activities so as to necessitate additional expenditures from local revenues unless the State provides annually 90% of the funding for these expenditures from State funds not previously appropriated to that local unit of government.*

Section 21 therefore requires the State, in addition to reimbursing the municipalities for at least 50% of the revenue lost, to also reimburse municipalities for 90% of the administrative costs associated with a new statutory property tax exemption. This mandate reimbursement can be overridden by the legislature through a 2/3 vote by all members of each house.

Although article IX, section 7 requires a general valuation at least once in ten years, that section works in conjunction with article IX, section 8 (property must be assessed equally according to just value). The result is a general requirement for municipalities to make an effort, at least every ten years, to review property values with the goal of maintaining equity within the municipality. This requirement may or may not lead to a formal revaluation of all property in the municipality. A general valuation is not the equivalent of a professional revaluation.

Regarding article IX section 7, the Maine Supreme Court stated in 1894:

> *The two sections 7 and 8… must be construed together, to determine their scope and extent. Section 7 provides that, so long as the public expenses shall be assessed on polls and estates, to equalize the burden as nearly as practicable, a general valuation shall be taken as often as every ten years. By its terms, it necessarily implies a periodical and regularly recurring assessment of predetermined amounts, proportioned to the entire estates within the taxed district, to meet continuing and regularly recurring expenses; while section 8, manifestly referring to the same class of general taxes, provides for an equal apportionment and assessment according to value.* (State v. Hamlin)

Two other provisions dealing specifically with taxation are worthy of mention in setting the constitutional framework. Article I, section 22 and article IX, section 9, provide:

> Article I, section 22: "*No tax or duty shall be imposed without the consent of the people or of their representatives in the Legislature."* (contained in the constitution as originally enacted.)

> Article IX, section 9: *"The Legislature shall never, in any manner, suspend or surrender the power of taxation."* (Added in 1876 by Amendment XVII.)

These two somewhat complementary mandates have insured that property tax statutes remain the province of the people either by statewide referendum or through the Legislature.

For taxpayers who disagree with the assessed value of their property, an appeal process is guaranteed by the equal protection and due process requirements of the Maine Constitution. The state has in turn established specific statutory guidelines.

Just Value Clause

Just Value. The concept of just value is fundamental to the primary goal of property taxation: equity. Equity is achieved when all taxable property is properly assessed, and no property owner is obligated to pay more or allowed to pay less than a fair share of the property tax burden. However, since property taxation is the product of an assessment function, and because property assessment is a partially subjective process, the achievement of complete equity remains an elusive challenge. Nevertheless, every assessor is charged with the responsibility of striving for the greatest degree of equity possible (Moser v. Phippsburg).

Article IX, section 8 of the Maine Constitution, known as the "just value clause" is fundamental to property taxation in Maine:

> *All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof.*

The broadness and generality of this provision display qualities that are characteristic of constitutional provisions. The phrase "[a]ll taxes upon real and personal estate" is commonly taken to mean all property taxes. A tax levied on the ownership of property is a property tax. On the other hand, a tax imposed on a particular use of property or on a certain power over property that is incidental to ownership is an excise tax rather than a property tax. For example, Maine's motor vehicle excise tax is imposed for the privilege of operating a motor vehicle over the public ways (36 M.R.S. § 1482(1)(C)). More than a century ago, the courts sharpened the distinction between property taxes and excise taxes by employing the following two-part test (State v. Western Union):

1. How is the tax calculated? If the rate is adjusted to meet an established revenue total, it is a property tax. If the rate is static and usually set in law, it is an excise tax.

2. What is being taxed? If the tax is on ownership of property, it is a property tax. If the tax is on the use of property, such as doing business or driving a car, it is an excise tax.

Property tax is bound by the Maine Constitution, article IX, section 8 – all taxes apportioned and assessed equally. Excise tax is not bound by this provision. (Eastler v. State Tax Assessor).

The phrase "assessed by authority of this state" underscores the fact that municipalities administer the property tax completely absent of the power to tax, as distinguished from the governmental capacity to administer a tax. In other words, the Legislature delegates administration of property tax to the municipalities, but retains the power of taxation (including the power to impose tax on or exempt certain property) for itself. This hazy distinction becomes clearer through the following points. Article IX, section 9 provides that, "The Legislature shall never, in any manner, suspend or surrender the power of taxation." On the strength of this provision, all the legal power of taxation in Maine is vested exclusively in the Legislature, because the sovereign right of taxation is vital and essential to the very existence of government (Morris v. Goss).

Of course, this does not supersede the federal government's authority to levy a national tax to which Maine citizens would be subject, such as the federal income tax; but it does prohibit municipalities from adopting policies which would infringe in any way upon the Legislature's taxing power. For instance, municipal officials motivated by an imperative for economic development might attempt to negotiate a deal to limit the tax liability of a facility with a significant impact on the local economy. Such instances of intentional under-taxation of certain property results in the over-taxation of other property, thereby imposing an additional burden on other taxpayers in the municipality and infringing on the Legislature's powers of taxation and exemption, and the Legislature cannot constitutionally transfer this power to municipalities (Brewer Brick Co. v. Brewer).

Note the use of the word "shall" as opposed to the word "may" in the above paragraph. This word demonstrates the legislative intent to deny or permit discretion in the application of a law. This important shall/may distinction appears often and it warrants careful attention. "Shall" is ordinarily interpreted to mean "must" or "will," while "may" usually indicates an option.

,The phrase "shall be apportioned and assessed equally" mandates that all classes of taxable property (land, buildings, personal) and all classifications of property (agricultural, residential, commercial, industrial, etc.) be subject to the same tax rate and valued at the same ratio to just value or market value (Kittery Electric Light Co. v. Kittery). This contrasts with other states that allow personal property to be subject to a different tax rate than real estate. This phrase may seem to be redundant due to the apparent synonymy of the words "apportioned and assessed." The distinction between the two is that apportionment involves dividing the tax burden into various shares, whereas assessment refers to the procedure of charging property owners with their specific shares of that burden.

The final phrase of article IX, section 8, "according to the just value thereof" is the pivotal point of this constitutional law. Although the Legislature has frequently amended the statutory definition of just value (36 M.R.S. § 701-A), the courts have consistently maintained that just value is market value; that is, the price that a property will bring on the open market between a willing seller and an unrelated, knowledgeable buyer under normal conditions. Although professional manuals provide for three different accepted approaches to value (the cost approach, the income approach, and the market approach), the method of arriving at just value for tax purposes is left to the discretion of the assessor (Shawmut Inn v. Kennebunkport). However, the Law Court has made clear that the assessor must consider all three approaches in assessing property. Regardless of the effect of economic factors (such as a stock market crash) on the relative worth of property, the true value of real estate should be viewed as fairly constant and based on measurably stable conditions over a period of time (Sweet v. Auburn).

Just value is often interpreted to be the market value of property within the context of that property's highest and best use. This terminology reflects the belief that market value is dependent, in large part, on the potential for development that is inherent in a property. Sales data often supports a positive correlation between potential for development and highest market value. However, just value is statutorily defined as that value arising out of presently possible land use alternatives, considering several factors including: current use, physical depreciation, functional and external obsolescence, as well as any enforceable restrictions limiting the use of the property such as zoning laws, subdivision regulations, and any recorded contractual provisions such as conservation easements. In determining just value, a property subject to restrictions, contractual or otherwise, that restrict the use of the property may not be considered comparable to a property not so restricted (36 M.R.S. § 701-A).

Other Provisions

In addition to the just value provision, the Maine Constitution addresses certain topics relating to property taxation as identified below.

Intangible Personal Property. Article IX, section 8 also empowers the Legislature to provide for the taxation of intangible personal property such as stocks and bonds. Such personal property is not currently subject to property tax in Maine.

Although the Legislature has authority to exempt any class of property, it does not have authority, except in the case of intangible personal property, to provide for one method of assessment for one class of property and another method for another class.

Current Use Assessments. Article IX, section 8, subsection 2 gives the Legislature the option of providing for the assessment of certain types of real estate based upon current use, provided that property so classified would be subject to certain penalties upon withdrawal from classification. Unlike highest and best use, the current use approach is intended to result in taxation which encourages the preservation and protection of certain natural resources against residential, commercial, and industrial development. The Legislature exercised this option in 1971. For more information, see the Current Use Assessments section of Chapter 6 for full discussion of this subject.

School District. Article IX, section 8, subsection 3 grants the Legislature the power to provide that taxes may be assessed on property according to any cost-sharing formula that it may authorize. School districts are authorized to issue warrants to the assessors of member municipalities requiring them to assess an amount equal to that municipality's share of the district's cost for education. A town cannot refuse to raise the district tax since the town is acting merely as a collection agent for the district (Opinion of the Attorney General, March 4, 1980).

Watercraft. Article IX, section 8, subsection 4 provides that, beginning in 1984, all watercraft as defined by the Legislature, is exempt from tax as personal property, provided that the watercraft is subject to an excise tax. As with other vehicle excise taxes, the excise tax on watercraft is retained by the municipality in which it was collected.

General Valuation. One section of the constitution that has been a source of confusion and misunderstanding is article IX, section 7, which provides that: "While the public expenses shall be assessed on estates, a general valuation shall be taken at least once in 10 years." This statement is frequently misconstrued to require a municipality to engage the services of a professional revaluation company at least every ten years. However, this interpretation does not make sense in light of the fact equity in assessments can generally be maintained without the need for these costly revaluations. Arguably, municipalities could minimize the chances of under- or over-assessment of property by revaluing it every year. This constitutional provision sought to balance the need for frequent revaluations against their cost by adjusting the maximum period municipalities could assess property without revaluing it.

Sections 7 and 8 of article IX of the Maine Constitution must be construed together to determine their scope and intent. Section 7 insists that so long as public expenses are assessed against estates, a general valuation should be undertaken at least every ten years to equalize the burden as nearly as practicable. It implies a regularly recurring assessment proportionately assessed against all taxable estates in the taxing jurisdiction to finance the regularly recurring public expenses. Section

8 requires an equal apportionment and assessment according to just value. These sections contemplate only the general, constantly recurring assessment upon the same property (State v. Hamlin).

Article IV, part third, section 1 of the Maine Constitution grants the Legislature power to make and establish all reasonable laws and regulations for the defense and benefit of the people of the state. This authority underlies the requirement that taxation must be for a public purpose or use, that is, for the benefit of the people. The exercise of the power to tax involves two steps, both of which are within the sole province of the Legislature. First, the determination of the nature of tax to be imposed, and second, the effective imposition of the tax in such a way to ensure its collection and availability for the purposes for which it was raised (Auburn v. Mandarelli). Stated differently, the form and extent of taxation rests with the Legislature, except for any limitations expressly imposed by the constitution (Greaves v. Houlton Water Co.).

The Legislature cannot bind itself to prevent a future change or repeal of a statute.

Taxes are neither a demand nor a debt, but rather an imposed duty creating an obligation to pay without necessity of any consent or agreement by the taxpayer (State v. Keith). Property taxes are an expression of constitutionally founded state sovereignty. Government has a right to secure revenue sufficient to maintain the preservation of public peace, health, and safety.

Taxation at the state or local level must be for a public purpose to satisfy constitutional requirements. A corollary of that statement is that the expenditure of public funds must also be for a public purpose. (Maine State Housing Authority v Depositors Trust Co.). Traditionally, public purposes appeared to be limited to purely governmental activity that affected all the residents of a municipality directly. However, in recent years these have been defined as purposes, potentially private in appearance, that would prevent economic loss to a community (Delogu v. State) or enhance employment opportunities in the community (Common Cause v. State). It is the above two cases upon which the basis for Tax Increment Financing is grounded.

CHAPTER 3

THE OFFICE OF THE ASSESSOR

Property taxes in Maine are administered at the local level by nearly five hundred organized municipalities (cities, towns, and plantations). In addition, approximately half of the State's land area is comprised of unorganized townships. The assessment function of these townships is performed by the Property Tax Division of Maine Revenue Services (36 M.R.S. § 302).

The municipal property tax assessor, although an employee of a municipality, is a public official performing a function in accordance with state laws. (Young v. Johnson). Furthermore, the municipal assessor is subject to the general supervision of the State Tax Assessor who, as head of Maine Revenue Services, has the responsibility to ensure that all property taxes in Maine are assessed in compliance with the laws of the State (36 M.R.S. § 201).

For a property tax assessment to be valid, all statutory requirements regarding that assessment must be satisfied. These statutory requirements may be grouped into two general categories. The first is that the money must be raised by a vote of the municipal legislative body (town meeting, town council, or city council), and this must be done at a meeting that has been legally called and notified (36 M.R.S. § 503). It is important to note, however, that if money raised for an illegal purpose (see Chapter 4) is assessed together with legally raised money, the assessment is still valid (Boothbay v. Race). Although any person who pays such a tax may recover from the municipality that part of the tax that was not legally raised, it is not the responsibility of the assessor to determine whether municipal appropriations are lawful. The second category of requirements is that the assessor must be qualified to hold office as assessor in addition to being properly selected and installed (Vigue v. Chapman). Any tax that is assessed by an assessor who has not met every statutory requirement is void and uncollectible (Springfield v. Butterfield).

Qualifications for the Office

To qualify for the office of municipal property tax assessor in any Maine city, town, plantation, or primary assessing area, an individual must be at least 18 years old, a resident of Maine, and a citizen of the United States (30-A M.R.S. § 2526). If an individual is also a member of the select board, that individual must be a registered voter of that town. If one member of the board of assessors is not legally qualified to hold office, the other members cannot assess a valid tax (Machiasport v. Small). In addition, full-time professional assessors are required to be certified by the State

(36 M.R.S. §§ 312 & 327(3)). This requirement is detailed later in this chapter under the heading of "Training and Certification."

For conflict-of-interest reasons, municipal treasurers and tax collectors may not be assessors for the municipality in which they serve as treasurer and/or collector (30-A M.R.S. § 2526(8)). The conflict of interest that renders the office of assessor incompatible with other municipal offices is based on ethical grounds. An assessor who also serves as tax collector would be able to use the collector's authority to cover up mistakes made as an assessor. The same conflict arises in the offices of assessor and treasurer. Similarly, an assessor who is also a member of the same municipality's local board of assessment review could be able to hear appeals arising from the discharge of their duties as an assessor; the same holds true for assessors who would also be county commissioners. However, this prohibition of incompatible offices does not prevent one municipality's tax collector or treasurer from legally performing the assessment function in another municipality.

Judicial proceedings regarding these matters often distinguish between a "de jure" board of assessors and a "de facto" board of assessors. These terms originate in Latin; "de jure" means according to the law, while "de facto" means in fact, and refers to the appearance of authority. A de jure board of assessors is one in which each member is statutorily qualified, properly selected, and legally sworn into office as an assessor (Dresden v. Goud). By contrast, de facto assessors, while appearing to hold office and exercise authority, cannot assess a valid property tax, and any tax assessed by de facto assessors cannot be legally enforced. Even if only one member of a board of assessors is de facto, the assessment is void (Williamsburg v. Lord). For example, a tax collector who has not had final settlement with a town is ineligible for the office of assessor and although formally elected, regularly sworn, and may have acted as assessor, he or she is merely an assessor de facto (Otisfield v. Scribner).

The importance of ensuring qualified assessors is critical to the economic stability of a municipality and its capacity to guarantee an uninterrupted source of revenue and effective tax collection procedures.

Selection of Assessors

The following provisions relating to the selection of assessors for cities, towns, and plantations do not apply to any municipality that is included in a primary assessing area or designated as a primary assessing unit (30-A M.R.S. §§ 2526(6)(H) & 2552(2)(F)). Primary assessing areas are discussed at the end of Chapter 5.

City Assessor. Unless the city charter provides otherwise, city assessors and their assistants are chosen on the second Monday of March to serve for one year. The city charter specifies the number of assistants to be elected. However, regardless of city charter provisions, a city council may by ordinance provide for the appointment of a single assessor for a term not to exceed five years (30-A M.R.S. § 2552(1)(C)).

Town Assessors. At a meeting of the legislative body held at least 90 days before the annual meeting, a town may decide to appoint a single assessor or elect a board of three, five, or seven assessors; most boards consist of three members. If a town fails to fix the number of assessors, three shall be elected (30-A M.R.S. § 2526(5)(A)(2)). If one member of a board of assessors is not properly sworn in, the tax assessed by that board is invalid. The board is considered a de facto board, even if most of the members are properly sworn in. (Williamsburg v. Lord). However, if all members of the board of assessors are properly sworn in and one member subsequently leaves their position, the remaining members continue to operate as a legal board, as long as it is specifically allowed by municipal charter; otherwise, a two-member board cannot act legally.

In towns where the town meeting is the legislative body, the determination to appoint an assessor or elect a board of assessors is effective only if the total number of votes cast equals or exceeds ten percent of the total votes cast for governor in the most recent gubernatorial election (30-A M.R.S. § 2526(5)(A)). Once a determination regarding assessors has been made, it stands until revoked at a meeting held at least 90 days before the annual meeting (30-A M.R.S. § 2526(5)(A)(1)). In the absence of a town charter provision to the contrary, the municipal officers of any town have the power to enact an ordinance providing for a single assessor (30-A M.R.S. § 2526(5)(B)).

An elected board of assessors may be chosen by written ballot at open town meeting (30-A M.R.S. § 2528). In a town of fewer than 4,000 residents (according to the most recent decennial census), to win, a candidate must receive more than half of the votes cast; in a town of more than 4,000, or a town of any size population that uses a secret ballot, the candidate with the most votes wins (30-A M.R.S. §§ 2526(1) & 2528(10)). If a town has not elected a full board of assessors, the select board themselves will serve as members of the board of assessors (30-A M.R.S. § 2526(5)(C) & 36 M.R.S. § 703). A select board member who is an assessor pursuant to this provision may resign the position of assessor without resigning the office of select board member. The select board may then appoint a qualified person to fill the vacancy in the board of assessors (30-A M.R.S. § 2602(2)). If a town has opted to have a single assessor, the select board appoint that assessor to serve for a term not exceeding five years (30-A M.R.S. § 2526(5)(A)(3)). Appointment of an assessor must be in writing and signed by the select board (30-A M.R.S. § 2526(2)).

In any action against a municipality, if the record is silent on how the assessors were elected, it is presumed that they were chosen legally, unless there is proof to the contrary (Hathaway v. Addison).

A municipality that elects a board of assessors may designate one member to be the chairperson. If not designated, a chairperson is elected from the board by ballot. If no member receives a majority vote, the municipal clerk determines the chairperson by lot (30-A M.R.S. § 2526(5)(D)(1)). The chairperson presides over meetings, but the chairperson's powers and duties are neither greater nor less than those of other individual board members. Boards of assessors act by majority, and their authority is exercised as a group. A partial board of assessors may, in certain cases, legally conduct business if a complete board was originally constituted. For example, a three-member board is properly elected and duly sworn into office in March. If a vacancy occurs in May when one member resigns, the two remaining members may commit taxes (36 M.R.S. § 709).

The term of a single assessor may not exceed five years, but the assessor may be appointed to more than one term. Many municipalities provide for staggered terms for board members, with one or more positions coming up for election each year, thereby ensuring a degree of continuity in office and stability in administration. If the term of office is not fixed, it shall be for one year (30-A M.R.S. § 2526(5)(A)).

If a municipality neglects to choose assessors for three months after any warrant for a county or school district tax has been issued, or if the chosen assessors have neglected to assess and certify those taxes, the State Treasurer or the treasurer for that county may notify the county commissioners. When notified, the commissioners will appoint assessors for that municipality (36 M.R.S. § 705).

Elected assessors may not be removed from office prior to the expiration of their term. After providing appropriate notice and hearing, however, the select board may remove an appointed single assessor for cause.

A vacancy in the office of assessor may occur as a result of non-acceptance, resignation, death, removal, permanent disability or incompetence, failure to qualify for the office within ten days after written demand by the municipal officers, or failure of the municipality to elect a person to office. When such a vacancy exists, the select board may appoint a qualified person to fill that vacancy (30-A M.R.S. § 2602).

Plantation Assessors. Plantations are the simplest form of organized municipal government in Maine. Consistent with the concept of plantations as transitional forms of government, many plantations subsequently become incorporated as towns. The statutory provisions relating to the method of election and the term of office for town assessors (30-A M.R.S. § 2526(5)) apply also to plantation assessors, provided the plantation is not part of a primary assessing area. Organized plantations elect three assessors at their annual meeting; if money is raised for the repair of roads and bridges, the plantation assessors choose one or more road commissioners in the same manner employed by town select board. (30-A M.R.S. § 7004)

Chief Assessors in Primary Assessing Areas. A primary assessing area can be either a primary assessing unit or a primary assessing district. A primary assessing unit is a single municipality designated as a primary assessing area. A primary assessing district is a group of municipalities designated as a primary assessing area. In a primary assessing area, the selection of assessors is governed by municipal ordinances or charter provisions (36 M.R.S. § 471). Since the enactment in 1973 of 36 M.R.S. Chapter 104, no group of municipalities has elected to be a primary assessing district. Provisions relating to the selection of the chief assessor of a primary assessing area are fully described in the statutes (36 M.R.S. § 471 – 474).

Assessors' Agents. It has become a common practice for municipalities with elected boards of assessors to employ individuals to provide professional assistance in the administration of the local property tax. There are currently no laws that specifically govern the activity of assessors' agents. The ever-increasing demand for experienced assessors is, in part, a result of the way the services provided by these advisors allow municipalities to strike a balance between tradition and practicality; the part-time board of assessors embodies the tenets of home rule and local control, while professional assistance makes it possible for the board to satisfy the responsibilities of an office whose duties continually become increasingly technical and complex.

While a board may heavily rely on their assessor's agent and perform only perfunctory review of the work done, all of the legal assessing power and responsibility continues to rest with the board of assessors (Frank v. Skowhegan). Assessors' agents have no actual legal assessing authority, and they are not required to take an oath of office. Local assessors must remain informed about the methods used by hired professionals and they must use their local knowledge to check the accuracy of an agent's recommendations.

Oath of Office

After being legally qualified and properly selected, it is imperative that each assessor be sworn into office as an assessor (Dresden v. Goud) before assuming the duties of office. The law that requires assessors to be duly sworn is satisfied when the assessors take an oath "faithfully and impartially to perform the duties assigned them" (Patterson v. Creighton). If no assessors have been elected and the select board are to act as assessors, the select board must be sworn into office as assessors, even if they have already been sworn into office as the select board. County commissioner appointed assessors must also be duly sworn (36 M.R.S. § 705).

The oath must be administered "by the moderator in open town meeting, by the clerk or by any other person authorized by law to administer an oath, including a notary public or dedimus justice" (30-A M.R.S. § 2526(9)). If a member of a board of assessors is sworn by a person who is not authorized to administer an oath of office, any tax assessed by that board is invalid (Orneville v. Palmer). If the oath is administered by a person who is not the clerk, then the person administering the oath shall present the official being sworn with a certificate to be returned to the clerk for filing, and that certificate shall state the name of the person who administered the oath as well as the date when the oath was taken (30-A M.R.S. § 2526(9)(A)). In the absence of any recorded evidence that the assessors were duly sworn, the fact may be proved by an oral declaration (Hathaway v. Addison).

After town meeting, the clerk must issue a constable a warrant containing the names of people who were chosen for office, but who have not been sworn into office. Those individuals shall be summoned by the constable to appear before the clerk within seven days to take the oath of office (30-A M.R.S. § 2526(9)(C)).

Article IX, section 1 of the Maine Constitution presents the recommended form of the oath as follows:

> "I,______________________ do swear, that I will support the Constitution of the United States, and of this State, so long as I shall continue a citizen thereof. So help me God."
>
> "I,______________________ do swear, that I will faithfully discharge, to the best of my abilities, the duties incumbent on me as _______________ according to the Constitution and laws of the State. So help me God."

In the event that the incumbent is conscientiously reluctant to taking an oath (presumably on grounds of religious convictions), affirmation may be substituted; that is, after the administrator of the oath recites, "Do you,____________________ swear (affirm) that you will . . . so help you God?", the incumbent simply responds, "I do."

Compensation for Assessors

Municipalities are required to pay assessors a reasonable compensation and actual expenses incurred in complying with the requirements of Title 36 (36 M.R.S. § 206). At its annual meeting, if a town fails to fix the compensation for assessors, each assessor shall be paid ten dollars per day for every day actually and necessarily employed in the service of the town (30-A M.R.S. § 2526(5)(E)).

Liability of Assessors

An assessor may legally be held accountable for wrongful losses or damages that someone suffers as a result of that assessor's actions. Generally, property tax assessors are responsible for their own personal faithfulness and integrity. Assessors are not responsible for any tax that they are by law required to assess; that liability rests solely with the municipality for whose benefit the tax is assessed (36 M.R.S. § 702) (Bristol v. Eldridge). However, the provisions of § 702 afford no protection to a person acting as an assessor without having been elected or appointed as an assessor. For example, an assessor elected at a town meeting that has not been legally called is not an official assessor. Such a person would be personally liable for the acts of a collector to whom they have issued a warrant for the collection of taxes assessed by them (Allen v. Archer). If it is alleged that assessors were not properly elected and the record is silent as to the mode by which they were elected, unless there is proof to the contrary, it is presumed that the assessors were chosen in the manner required by law (Hathaway v. Addison).

The statute does not exonerate assessors for the assessment of a tax against a person of another town or state who is not liable to taxation by them. Assessors are liable for any assessment that they are not by law required to assess. Assessors are also liable for collection actions resulting from an illegal assessment because the overlay was exceeded (Mosher v. Robie). Taxpayers may also file suit in Superior Court against a Town that illegally assesses a tax to them for property they do not own without the taxpayerhaving first having exhausted available administrative remedies, i.e., without first requesting abatement (Oakes v. Town of Richmond).

An assessor who refuses to assess a tax as required by law, or who knowingly omits or fails to perform any duty imposed by law, commits a civil violation that is subject to a fine not exceeding $100 (36 M.R.S. § 704). In addition, an assessor who knowingly adopts a valuation system that is intentionally designed to produce inequitable assessments also violates the oath of office (Shawmut Manufacturing Co. v. Benton).

Although an assessor generally escapes liability in the performance of their official duties, costly and embarrassing litigation against a municipality could reflect negatively on the assessor's performance. Prudent assessors combine expert knowledge of law with public relations skills to avoid unnecessary conflict.

Public Right to Know. Assessors must be familiar with Maine's Freedom of Access Act (1 M.R.S. §§ 400 – 414). This provision ensures that virtually all assessors' records are open to public inspection. Every person has the right to inspect and copy any public record during regular business hours (1 M.R.S. § 408). Such public records would include, but not necessarily be limited to, the valuation book, commitment forms, property record cards, property tax maps, applications for the Business Equipment Tax Exemption program, and the declaration of value forms relative to Maine's Real Estate Transfer Tax (36 M.R.S. § 191(2)(K)). This right to inspect and copy also includes assessor field notes, so an assessor should be prudent with their language when describing property.

Exceptions to the Freedom of Access Act extend the protection of confidentiality to certain types of records, including, but not limited to, information contained in property tax abatement requests due to hardship or poverty (hearings and proceedings relating to these requests must be held in executive session) (36 M.R.S. § 841(2)); applications and proof of entitlement for veterans' exemptions (36 M.R.S. § 653(1)(G)); certain public housing authority records (30-A M.R.S. § 4706); and a variety of personnel and employment records (30-A M.R.S. § 2702). In addition, certain information provided to the assessor as part of a request made pursuant to 36 M.R.S. § 706-A is confidential, but only if the information is proprietary and is clearly labeled by the taxpayer as proprietary and confidential (Blue Sky West, LLC v. Me. Revenue Services).

An assessor may arrange for records to be available for public inspection at regularly scheduled times or by appointment. In municipalities where there is no town office or where there are no regular hours when the assessors meet, assessors must reasonably make their records available to all people requesting inspection or copying such records. The Freedom of Access Act, for example, does not require an otherwise busy assessor to interrupt an ongoing task to respond to an unexpected request for a list of all two-, three-, and four-family homes in town. However, any willful attempt to defeat the legislative intent of the Freedom of Access Act is a Class E crime (1 M.R.S. § 410).

If an assessor believes that it is proper to refuse permission to inspect any record which the assessor has in custody, a written statement including the reasons for the denial must be issued within ten days of receipt of the request. Any person aggrieved of such a denial may appeal to Superior Court within ten days (1 M.R.S. § 409).

Miscellaneous Liabilities. Certain types of misconduct or neglect of duty on the part of an assessor could result in liability. For example, abatement denials or valuation schemes which are intentionally discriminatory based on a property owner's race, creed, national origin, etc. violates the federal Civil Rights Act of 1871 (42 U.S.C. § 1983). Such willful violation could expose an assessor to personal liability for damages.

Beyond the protection afforded to the assessors in 36 M.R.S. § 702 (liability for an assessment rests solely with the municipality), assessors generally enjoy personal immunity from civil liability in discharging official duties (14 M.R.S. § 8111). Municipalities may purchase insurance to protect employees from personal liability that may incur in exercising legal authority (14 M.R.S. § 8116); assessors would be prudent to attempt to secure such protection when negotiating conditions of employment.

Powers and Duties

Assessors in Maine occupy a unique place in the governmental structure, fulfilling a dual role of municipal official and agent of the State (Young v. Johnson). Municipalities cannot exert any legal control over the actions of municipal assessors, since assessors are subject to the supervision and control of the State Tax Assessor in the discharge of their official duties (36 M.R.S. § 201). The State Tax Assessor is empowered to take all necessary and legal means to ensure fulfillment of the intent of the law (36 M.R.S. § 301). Assessors are required to obey all warrants received by them, and to govern themselves by 36 M.R.S. §§ 301 - 329 and 501 - 1121 (36 M.R.S. § 701).

Assessment. The primary duty of property tax assessors is to annually ascertain as accurately as possible the nature, amount, and value of all taxable property as of April 1. An assessor must also estimate and record land values, separately from buildings, for each parcel of real estate in the municipality (36 M.R.S. § 708).

Tax assessors have a constitutional obligation to assess all property fairly, equally, and according to just value. It is presumed that assessors act in good faith and in conformity with legal requirements (Frank v. Skowhegan). Uniformity and equality in the constitutional and statutory sense do not require mathematical exactitude in the valuation of property for tax purposes, but the percentage of true value must be consistent for all taxable property (Kittery Electric Light Co. v. Kittery). Neither the constitution nor the statutes expect assessors to make assessments where all values are so exact that no expert could disagree (Sears, Roebuck & Co. v. Presque Isle). In arriving at value for assessment purposes, assessors must consider only that value arising from presently possible land use alternatives to which the parcel in question may be put, while considering all relevant factors including restrictions, easements, current use, physical depreciation, as well as functional and external obsolescence. Assessors may not, however, use as comparable two properties that are subject to differing restrictions, contractual or otherwise (36 M.R.S. § 701-A).

Property value is necessarily based upon the opinion and judgment of the assessor unless it can adequately be shown that, under the circumstances, the value in question is unreasonable and results in an overassessment which is either discriminatory, fraudulent, dishonest, or illegal (Maine Consolidated Power Co. v. Farmington). Absent the intent to overvalue property, there is a presumption of good faith and conformity to legal requirements attached to the acts of assessors in determining just value (Cumberland County Power and Light Co. v. Hiram). In addition, a town's tax assessment is presumed valid. (Ram's Head Partners v. Cape Elizabeth).

Tax Year and Fiscal Year. Property taxes in Maine are assessed annually on the basis of the status of property as of April 1, and the taxable year is April 1 through March 31 (36 M.R.S. § 502). This does not mean that property taxes are assessed on April 1; it only means that the property tax is assessed based on who owned what and where on April 1. A deed cannot be backdated prior to April 1 by a seller to transfer liability for tax. (Egery v. Woodard). Regardless of when the tax is assessed, conditions existing on April 1 determine property tax liability (Bucksport v. Woodman).

This statutorily defined tax year is often confused with the municipal fiscal year, which starts and ends on the dates when a municipality opens and closes its books for the annual budget. The starting and ending dates for a municipal fiscal year are determined by local preference. A few municipalities still use the calendar year as their fiscal year, although the majority have changed to a July 1 through June 30 fiscal year (30-A M.R.S. § 5651) which corresponds with the fiscal year of the State.

When property is transferred, the property tax is usually prorated between buyer and seller, according to the municipal fiscal year (36 M.R.S. § 558). This division of the tax generates considerable confusion, because many people believe that they pay property taxes from April 1 through March 31 when, in fact, April 1 is only a statutorily prescribed benchmark to determine, through property valuation, an owner's equitable share of the municipality's expenses for that budget year. The confusion is sometimes compounded by the assumption that the fiscal year in question must include the April 1 upon which the tax status is fixed, but there is no such legal requirement.

Inventory of Taxable Property; Physical Inspection; Tax Lists. As soon after April 1 as is practicable, the assessor should begin the first step in the assessment process, which is to update the existing records regarding the nature (land, building, personal), amount (size and number), and value of all taxable property (36 M.R.S. § 708). There are two approaches to building an accurate list and just value of property, and assessors should employ both methods in combination for optimal results.

The primary approach involves visual inspection, and the accuracy of the list of property and its just value generally corresponds to the thoroughness of this inspection. Assessors are required to physically inspect each taxable account at least every four years (36 M.R.S. § 328(7)). Failure to do so will not invalidate a tax, but it will most likely result in inequitable values and numerous appeals. Boards of assessors should perform this work as a group to maintain consistency in judgment, especially with regard to determinations of condition and obsolescence. If time constraints necessitate dividing the work among members of the board, it is imperative that the board, as a whole, review these findings so that differences in judgment can be reconciled prior to assessment (Champion International Corp. v. Bucksport).

The requirement for assessors to physically inspect property does not supersede the property owner's right to privacy. The assessor has no legal authority to trespass onto property where the owner denies access. In such instances, the assessor should make the most accurate listing possible from the closest allowable viewing points. If insufficient information is available, it is not unreasonable to assume the highest estimate of property characteristics commensurate with what has been specifically viewed. Owners who refuse to allow the assessor to properly inspect the property jeopardize the success of any subsequent appeal of the assessment. An assessor's estimate of value is based on an analysis of known facts. To deprive the assessor of factual information is tantamount to encouraging application of imagination, rather than technical skills and informed judgment.

Another – but not mutually exclusive – method of developing an accurate list of property and its just value involves the use of taxpayer lists (see Property Tax Bulletin No. 2) (36 M.R.S. § 706-A). These lists have been known in some areas as "domesday lists," or "doomsday lists" a term which refers to the Domesday book kept by William the Conqueror describing all the lands and estates of persons in England after his conquest of that country in the 11th century. Before making an assessment, assessors may give seasonable notice to all persons liable to taxation or qualifying for an exemption that is subject to full or partial reimbursement by the State within that jurisdiction to furnish the assessors with true and perfect lists of all their estates as of April 1 (36 M.R.S. § 706-A). "Seasonable," which is neither defined by statute nor by judicial holding, is taken to mean "on or about April 1."

"Notice" is defined under 36 M.R.S. § 111(2). The notice should state the deadline for filing the list; the time frame should be reasonable enough to allow the taxpayer to comply, and that deadline must come before the assessment is to be made (Maine Lumber Co. v. Mechanic Falls). The word "reasonable" is necessarily ambiguous. The facts in each case will determine what is and what is not reasonable (Farrelly v. Deer Isle). If the assessors neglect to give notice to file a true and perfect list, their assessment is still valid (Rockland v. Farnsworth).

There is no statutorily prescribed form for the taxpayer list. Samples are provided in Property Tax Bulletin No. 2, and standard types of such forms are available through various printing houses.

In fulfilling the requirement to file a true and perfect list, the taxpayer need not specify the value of the property that is being declared unless the assessor asks for that information. In cases where the taxpayer is uncertain of their ownership in the property (for example, if the title is in dispute or litigation), those facts may be stated in the list (Dead River Co. v. Houlton). A taxpayer who furnishes the list timely by whatever means suggested in the assessor request letter satisfies the requirements of this section (Perry v. Lincolnville).

Assessors may take a reasonable amount of time to examine the furnished lists (Perry v. Lincolnville), and they may require the person filing the list to make an oath as to the accuracy of the information (36 M.R.S. § 706-A). Section 706-A also allows the assessors to make additional inquiries (either with the true and perfect list or after) into the nature, situation, and value of the property, and a taxpayer who refuses or neglects to answer all such inquiries forfeits the right to appeal to the county commissioners or the local board of assessment review for an abatement (Lambard v. Kennebec County Commissioners). As discussed in the section on Freedom of Access, information provided to the assessor as part of a true and perfect list or as part of a subsequent request is confidential, but only if the information is proprietary and is clearly labeled by the taxpayer as proprietary and confidential (Blue Sky West, LLC v. Me. Revenue Services).

Section 706-A provides that the taxpayer's "list and answers are not conclusive upon the assessors." This means that the assessors are not required to assess according to the information as it appears on the list; in fact, the assessors are at liberty to make whatever additions, deletions, or alterations are warranted to produce an equitable assessment (Gilpatrick v. Saco).

This statute makes the failure of a taxpayer to furnish the required list of real and personal property a bar to application for abatement and it should be rigorously enforced even in cases of an innocent omission or misrepresentation of the facts by the taxpayer (Dead River Co. v. Houlton). If, however, the assessor accepts an abatement request from a taxpayer who has not furnished a list as requested by the assessor, the assessor is deemed to have waived the list requirement regarding that taxpayer.

If the taxpayer fails to file the list and the notice was given by mail, the taxpayer forfeits the right to appeal the assessment; unless the list is filed with the abatement application and the assessors are satisfied that the taxpayer was unable to file the list at the time appointed. On-On-site investigation of the property by an appraiser hired by the assessors does not relieve the taxpayer of the obligation to file a list (Maine Lumber Co. v. Mechanic Falls). However, the right to appeal the assessment is not forfeited if the taxpayer claims that the notice was never received and the assessors have no proof (such as a certified mail return receipt) that the notice was sent. On the other hand, whether a taxpayer is required to file a true and perfect list has been historically used by courts to identify which administrative remedies are available to taxpayers seeking an abatement (Oakes v. Town of Richmond).

Municipalities are unlikely to incur the cost of certified mail for sending tax list notices to all taxpayers, even in a revaluation year. However, there is nothing in the law that prevents assessors from using certified mailto send the tax list notice to certain property owners; in fact, many assessors find that it is advantageous to send the notice by certified mail to targeted groups of people, such as new or large businesses.

Commitment of Taxes. Commitment is the assessor's act of delivering the tax lists to the collector, together with the certificate of commitment, the certificate of assessment, and the collector's warrant. Together, this material makes up the valuation book. The certificate of commitment names the collector, the total amount to be collected, and the date of the commitment; it must also be signed by a majority of the assessors (36 M.R.S. § 709). The certificate of assessment certifies the valuation book by indicating the number of pages in the book, the year of the tax, the date of the commitment, and the signatures of the assessors. The collector's warrant is the legal instrument that authorizes and compels the collector to perform the duties of tax collection. The commitment forms must be signed by a majority of the board of assessors (Johnson v. Goodridge); failure to do so invalidates the assessment (Pearson v. Canney). A certificate of assessment must also be returned to the appropriate treasurer for any tax included in the assessment; that is, to the municipal treasurer for the municipal appropriations, to the county treasurer for the county tax, to the Treasurer of State for a state tax, if any, etc. (36 M.R.S. § 712).

Forms used for the commitment of taxes are prescribed by the State Tax Assessor (36 M.R.S. § 753), who has the power to enforce their use (36 M.R.S. § 205).

The valuation book must show the real estate tax, personal property tax, and total tax due for each taxpayer account (Norridgewock v. Walker).

The deadline for the commitment of taxes may be established by municipal vote (36 M.R.S. § 505 (1)). If no date is established, common sense dictates that property taxes should be assessed before payment is due, although nothing in the law indicates that failure to do so would invalidate the tax. In any event, statistics from a completed assessment are necessary to answer the questions on the annual Municipal Valuation Return (36 M.R.S. § 383), which is required to be filed with the Property Tax Division by November 1 or within 30 days from the date of commitment, whichever occurs later.

Assessors should specify, in the collector's warrant, the date by which collections are to be completed and by which time the collector is to settle the accounts with the municipality for that tax. This settlement date may not be less than one year from the commitment date to allow the collector sufficient time to complete the collections; if no settlement date is fixed, collectors must perfect (complete) their collections within two years from the commitment date (36 M.R.S. § 760).

Before taxes are committed, the municipal officers (plantation assessors, town select board/councilors, etc.) are responsible for ensuring that the collector furnishes a suitable bond (a written obligation to guarantee payment of a specified amount). Upon approval and acceptance, the bond must be recorded by the clerk in the municipal records (36 M.R.S. § 755).

Assessment Records. Before taxes are committed, assessors are required to make a permanent record of the assessment to be kept in the assessor's office that, if there is no official office, is the place where assessors regularly meet to conduct business. This permanent record must contain the invoice (inventory of taxable property including descriptions sufficient to uniquely identify the property) and the valuation from which the assessment is made (36 M.R.S. § 711). Separate values must be shown for land, buildings, and personal property (36 M.R.S. § 708). A proper record of the assessment is prerequisite to the effective enforcement of the tax (Baker v. Webber). However, the failure to deposit and keep a copy of the valuation book does not invalidate the assessment (Greene v. Lunt). Supplemental assessments must be documented by attachment in the valuation book of a certificate of assessment signed by the assessors stating that the tax was omitted from the original assessment by mistake (Topsham v. Purinton).

Every five years, beginning in 1963, assessors must include exempt property (except property subject to the Business Equipment Tax Exemption program, which must be included every year) in the assessor's inventory (but not in the tax list) together with the assessor's estimated full market value of that property (36 M.R.S. § 707). Exemption valuation is required to be reported on the annual Municipal Valuation Return (36 M.R.S. § 383).

Recommended guidelines relating to the specific form and content of property tax valuation books are detailed in Property Tax Bulletin No. 15.

Training and Certification

The goal of property taxation is equity. That goal may best be achieved under the guidance of competent, professional administration. The cornerstone of professionalism in assessment administration is sound knowledge and experience in the various requirements of the vocation.

A professional assessor is defined as any person employed full-time by one or more municipalities who devotes at least 75% of work time to assessment administration (36 M.R.S. § 306(5)). Professional assessors are required to be certified by Maine Revenue Services (36 M.R.S. § 327(3)). Violation of the certification requirement is a civil infraction carrying a fine of $100 to $250 (36 M.R.S. § 312). As an information service to municipalities, a list of Certified Maine Assessors is available from the Property Tax Division of Maine Revenue Services (36 M.R.S. § 327 (3)).

Any municipal assessing unit may employ a part-time, non-certified assessor, but when any municipality employs a full time, professional assessor, this assessor must be certified by Maine Revenue Services (36 M.R.S. § 327(3))

The Property Tax Division holds certifying exams at least two times each year (36 M.R.S. § 310). There are four professional assessor designations conferred by Maine Revenue Services:

Certified Maine Assessor ("CMA")
Certified Maine Assessor, Level 2 ("CMA-2")
Certified Maine Assessor, Level 3 ("CMA-3")
Certified Maine Assessor, Level 4 ("CMA-4")

The Property Tax Division previously conferred a fifth designation, the Certified Assessment Technician, ("CAT"). Previously certified CATs retain their active certification status if they meet the qualifications for certification renewal. In addition to these designations, a certified assessor may opt for Inactive/Retired status (MRS Rule 205, § .01). Certified assessors must complete at least 16 hours of classroom training each year to maintain their certification in good standing (36 M.R.S. § 311); the term "hours of classroom training" is defined for this purpose as clock hours, not college credit hours (36 M.R.S. § 306(2)). Assessors achieving the designation CMA-2, CMA-3, or CMA-4 are required to complete additional and advanced training each year to retain that designation. Certificates are subject to downgrade and revocation for failure to fulfill recertification requirements.

In support of this continuing professional education requirement, Maine Revenue Services sponsors three introductory courses in assessment administration. These courses are designed to prepare provide students with the basic framework required to work as a professional assessor. These introductory courses have historically been offered each year at the Maine Property Tax School, a week-long summer workshop that offers a variety of courses that qualify for recertification and continuing education credits. Specifics of the training and certification program are detailed in Property Tax Bulletins No. 22 and No. 26, and MRS Rule 205 – Certification of Assessors.

CHAPTER 4

FISCAL MATTERS

Property Tax Appropriations

A municipality may legally raise or appropriate money for a number of statutorily specified purposes such as operating expenses, public works, schools and libraries, health and welfare, development, celebrations and commemorations, general duties, and operations. A municipality may also appropriate federal and state grant money received to purposes approved by the grants. 30-A M.R.S. §§ 5721 - 5730. Due to the home rule provisions of the Maine Constitution (article VIII, second part) and statute (30-A M.R.S. §§ 2101 – 2109), these approved purposes are not necessarily all inclusive. A municipality may raise and appropriate money for some legal purpose that is not specified in the statute, if that purpose does not conflict with any other provision of the Maine Constitution.

For example, an illegal purpose includes when a municipality uses tax money to pay the property taxes of a certain homeowner or group of homeowners. This purpose constitutes an exemption from property tax and infringes on the constitutional power of taxation that is vested exclusively in the Legislature under article IX, section 9.

As a rule, the assessment of a property tax is legal only if residents vote in favor of the amount to be raised at a meeting legally called and notified (36 M.R.S. § 503). It is not the assessor's responsibility to determine whether municipal appropriations are lawful. An assessment is still valid notwithstanding that money raised for an illegal purpose is assessed together with legally raised money (Boothbay v. Race). Any person who pays tax that is partially used for an illegal purpose may recover from the municipality that portion of the tax that was not legally raised, an additional 25% of that amount for interest and costs, and damages sustained because of the illegal assessment (36 M.R.S. § 504).

County commissioners may authorize a tax to be apportioned among all municipalities and the unorganized territory in that county. The county tax total may not be greater than 2% more than the amount authorized to be raised.

Tax Rate and Overlay

A property tax rate is computed by dividing the amount of revenue to be raised for a municipal budget by the total taxable valuation of a municipality. Expressed another way:

$$\frac{amount\ to\ be\ raised}{total\ taxable\ valuation} = tax\ rate$$

This results in a decimal; for example, 0.0235. This decimal tax rate can be converted into a mill rate, which is expressed in terms of the revenue that will be generated for every thousand dollars of taxable valuation. A property tax rate of 0.0235, for instance, is equivalent to 23.5 mills or $23.50 of tax for each $1,000 of property value in the town. The computation of the tax rate is generally assumed to be the assessor's responsibility; however, the law is silent on the question of who determines the tax rate. It is a good idea for the assessor to collaborate with the town manager and the finance director when determining the tax rate.

Under certain circumstances, fractional differences may occur in the computation of individual tax bills. For example, the tax rate of 0.0235 times a valuation of $125,250 produces a tax of $2,943.375. Either adjusting the tax rate or rounding the property values may avoid fractional differences; in the above example, a rate of 0.023 or 0.024 would suffice, or rounding all values to the nearest one hundred dollars would also eliminate the fractional difference.

Even if it were possible, it would not be practical to select a tax rate which would exactly produce the amount to be raised through the property tax. Since the property tax would fail to serve its purpose if it produced less than the amount needed to be raised, a tax rate is selected which is expected to generate an amount more than the amount needed to be raised. This surplus, called an overlay, must not exceed the amount to be raised by more than 5% (36 M.R.S. § 710); if it does, the entire assessment is void (Mosher v. Robie). The purpose of § 710 is to allow for convenience and practicality in the selection of a tax rate, and the unavoidably small amount of excess revenue is merely an incidental by-product of that administrative convenience.

Due Dates and Interest Rates

Due Dates. When discussing property tax payment schedules, it is important to differentiate between the terms, "payable," "due," and "overdue." The terms "due" and "payable" are often used interchangeably, but a distinction does exist: all due taxes are payable, but not all payable taxes are necessarily due yet.

1) Property taxes are considered to be **payable** from the time they are formally committed by the assessor to the tax collector, at which time the collector is legally authorized to accept payment of taxes and is duty-bound to employ all available legal means to secure payment.

2) Property taxes are **due** as of a specified date established annually at the municipality's discretion; balances that remain outstanding after that date may accrue interest.

3) Taxes are **overdue** after the due date established by the municipality and generally accrue interest from that date. Statutes often refer to overdue taxes as delinquent.

For example, if a municipality committed taxes on August 15 and sends out bills on September 1 with a due date of October 1; the tax is payable on August 15, due on October 1, and overdue on October 2.

At the meeting when a municipality votes on a budget, it may also vote to determine when the tax list must be committed, when property taxes are due, the rate of interest on overdue taxes, and whether a discount (referred to in law as an abatement) is to be allowed for taxes paid prior to a specified date (36 M.R.S. § 505). Depending on the form of municipal government, these decisions are made either by the city council, the town council, or the voters at town meeting.

When a municipality fails to vote on a date when the tax list is to be committed, the law is silent on this issue. Because the time frame for abatement requests is based on the commitment date (36 M.R.S. § 841), property taxes should be committed as soon as practicable. If the municipality establishes a date when taxes are due, commitment must logically occur prior to that date.

Interest. If a municipality elects to charge interest on overdue taxes, it must not only establish a due date from which interest will accrue, but it must also specify the rate of interest by vote. That rate may not exceed the maximum rate annually determined by the State Treasurer, which is posted on the Treasurer's website each year on or before January 20. A vote to charge interest applies to that year's tax and has no impact on taxes assessed in subsequent years; decisions relating to interest on overdue property taxes must be voted upon annually (Snow v. Weeks).

When interest on overdue tax accrues, it is added to, and becomes part of, the tax (36 M.R.S. § 505(4)). This means that if a taxpayer insists on paying only the overdue tax while refusing to pay the interest, a lien may be attached to compel payment of the interest. A valid lien threatens the owner's title in the property, regardless of how small the unpaid lien amount may be. (36 M.R.S. §§ 552 & 612). Unless the taxpayer specifies in writing how the payment is to be apportioned, the tax collector generally has complete discretion and may apply payments to the oldest tax first. This method may leave a tax balance that continues to accrue interest.

At the meeting when the municipality votes to raise a tax, it may also vote to partially abate taxes that are paid prior to a specified date (or dates, if the municipality has multiple payment dates, for example, half of the tax is due September 1 and the second half is due the following March 1). The abatement, sometimes called the discount and must be specified by vote, must not exceed 10% of the tax due. The treasurer must post notification of this vote within seven days after the commitment date. This means that, if the town approved the legal maximum, a taxpayer with a $1,000 bill would only have to pay $900 if the tax is paid in full by the date specified. The statutorily prescribed method for achieving this objective is provided in 36 M.R.S. § 505(5).

At any properly called meeting, a municipality may authorize its tax collector or treasurer to accept prepayment of taxes that have not been committed yet, and to pay interest at a rate not exceeding 8%. If the actual tax turns out to be less than the prepaid amount, the excess must be repaid; and the municipality must pay interest on the excess amount back to the date of overpayment (36 M.R.S. § 506). This provision is rarely, if ever invoked. Nevertheless, any taxpayer who pays an amount in excess of what is finally assessed (as in the case of a taxpayer who pays under protest, appeals the assessment, and is granted an abatement) must be repaid the amount of the overpayment plus interest back to the date of the overpayment at a rate established by the municipality. That rate may not exceed the interest rate established by the municipality for overdue taxes reduced by four percentage points. If the municipality fails to set a rate, it must pay interest at the rate it has established for delinquent taxes (36 M.R.S. § 506-A).

Tax Bills

Our constitutional form of government places an emphasis on the balance between rights and responsibilities. Property ownership is a basic right, and that right is balanced against certain responsibilities, not the least of which is to know what the taxes are and when they are due. In fact, there is no law in Maine that requires municipalities to send out tax bills. Although nearly every municipality issues tax bills every year, this is done out of tradition and common practice, not out of any statutory requirement (<u>Clark v. Gray</u>).

Although property tax bills are not legally required, the law does dictate the form and content of municipal property tax bills, if sent, requires that the due date be clearly stated and that a statement be included noting how the tax has been reduced as a result of state-municipal revenue sharing, state reimbursement for the Homestead exemption and state aid for education (36 M.R.S. § 507). The Property Tax Division annually provides the necessary information to satisfy the latter requirement.

Some taxpayers are under the misconception that a property tax bill is a legal document for which the municipality may be held liable for errors or misprints, and that a defective tax bill invalidates the tax. There is nothing in the law to substantiate such a claim. The tax bill is nothing more than an informational notice which in no way diminishes the taxpayer's responsibility to satisfy any property tax obligations. Further, any "error, mistake or omission by the assessors" does not void an assessment (36 M.R.S. § 504).

Fiscal Year Changes

A fiscal year is the period between one annual time of settlement or balancing of accounts and another; in other words, the period between the time of opening and closing the books for an annual budget. Most Maine municipalities operate on a fiscal year that begins July 1 and ends June 30, which coincides with the state fiscal year.

The law provides that, while changing fiscal years, a municipality make either one or two assessments based upon a single valuation, provided that the taxes raised are based upon appropriations made for a fiscal year that does not exceed 18 months (30-A M.R.S. § 5651). If the fiscal year in question is 18 months, most municipalities send a six-month tax bill, covering the 13^{th} to 18^{th} month period; this can also be used as a convenient starting point to institute semi-annual billing which promotes a more stable revenue flow. The major drawback with this approach involves the administrative difficulty resulting from the number of ownership changes that occur in the interim.

When real estate is transferred from one person to another, it is common for the people to prorate the taxes owed on the property. A purchaser of real estate may agree with the previous owner to pay a proportional share of taxes. Unless otherwise specified by the parties to their agreement, the taxes are prorated over the period of the fiscal year of the municipality in which the real estate is located (36 M.R.S. § 558).

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CHAPTER 5

ADMINISTRATION

Property Tax Division of Maine Revenue Services

The State Tax Assessor has general responsibility for property tax administration in Maine (36 M.R.S. § 301). Municipal tax assessors are agents of the state (Dillon v. Johnson); their actions and decisions are governed by state statutes (36 M.R.S. § 701). The Property Tax Division plays an integral role in this relationship.

The division's primary responsibilities consist of:

(1) Administering the annual state valuation program;

(2) Performing the property tax administration function for the unorganized territory; and

(3) Providing guidance and other support services for assessors, collectors, taxpayers, legislators, and other governmental agencies.

The Property Tax Division manages the training and certification program for assessors and administers certain state taxes, such as the Real Estate Transfer Tax (36 M.R.S. §§ 4641 – 4641-N), the Commercial Forestry Excise Tax (36 M.R.S. §§ 2721 – 2728) and the State Telecommunications Excise Tax (36 M.R.S. § 457). The division also oversees the enforcement of the statutory assessing standards (36 M.R.S. §§ 326 – 331).

State Valuation. State grants-in-aid are a vital cog in the machinery of municipal finance. The formulas used to calculate the various municipal shares of state financial assistance employ a variety of variables, including valuation of taxable property. For the state aid to be distributed equitably, the variables used in the formulas must be consistent; that is, the valuation figures must reflect the same percentage of market value for every municipality. Municipalities are required to assess at no less than 70% of just value for property tax purposes (36 M.R.S. § 327), but within that constraint there is great variability. Through a process called state valuation, the Property Tax Division annually develops an equalized value of all taxable value for every organized municipality and the unorganized territory (36 M.R.S. § 305(1)). The finished product lists each organized municipality and unorganized township along with its 100% value rounded to the nearest $50,000.

The State Tax Assessor certifies the state valuation to the Secretary of State by February 1 of each year (36 M.R.S. § 305(1)).

State valuation is the basis for apportioning the county tax. It is also a variable in the formulas for state-municipal revenue sharing, road assistance (highway block grants), general assistance (welfare) grants, and the largest piece, state aid for education.

The state valuation reflects the 100% taxable value, as of April 1, two years prior (MRS Rule 201, § 1(AA)). This means that a state valuation filed on February 1, 2024 reflects municipal values for the year 2022. The State Board of Property Tax Review hears appeals from any municipality that is aggrieved by Maine Revenue Services' determination relative to that municipality's state valuation (36 M.R.S. § 272).

The details of the state valuation process are explained in more detail in MRS Rule 201. The rules and bulletins published by the Property Tax Division are available on the MRS website.

Publications. A major goal of the Property Tax Division is to compile and disseminate current and historical information to interested citizens and government agencies at all levels. The goal is accomplished in large part through the distribution of various publications, some of which are described below.

Law Book. State of Maine Laws Relating to Property Taxation is a compilation of statutory provisions pertaining to property taxation in Maine. This book of property tax laws is the primary reference supplement to this text.

Annual Statistical Summary. The Municipal Valuation Return (36 M.R.S. § 383), which assessors are required to file annually with the Property Tax Division, is compiled into a statewide statistical summary which is available on the MRS website.

Introductory Courses; Assessment Manual. Three textbooks for four introductory courses in assessment administration, including this text, are maintained and are available to download free to all course participants and to other interested individuals. Free printed copies are also provided to all introductory course students. All others are charged a nominal fee for printed copies. The State Tax Assessor is also required to maintain and periodically update an assessment manual (36 M.R.S. § 331), copies of which are available from the Property Tax Division for a reasonable fee.

Forms. The State Tax Assessor, through the Property Tax Division, annually prescribes the forms to be used in the commitment of municipal property taxes (36 M.R.S. § 753); assessors must use these forms, and the State Tax Assessor is empowered to enforce their use (36 M.R.S. § 205). The Property Tax Division also provides forms for several tax types and other purposes. A list of these forms is available on the Property Tax website at *www.maine.gov/revenue/propertytax.*

Rules. Maine Revenue Services is authorized to promulgate administrative rules and regulations necessary to carry out its duties and responsibilities (36 M.R.S. § 305(5)). Copies of specific rules are available on the MRS website.

Bulletins. Certain portions of the law generate commonly asked questions or pose administrative challenges. Property Tax Bulletins explain these selected statutory provisions in plain language. These bulletins are intended to serve as guidelines in understanding, interpreting, and applying the law to everyday situations. They provide additional instructional material, but do not carry the weight of law.

Assessing Standards

Since 1979, municipalities have been subject to assessing standards requiring a 70% minimum assessment ratio and a maximum quality rating of 20 (36 M.R.S. § 327). Assessment ratios and quality ratings are the focal points of residential ratio studies conducted annually by the Property Tax Division in conjunction with the annual state valuation. Development of the ratios and quality ratings also assist municipal assessors with the statutory requirement to annually conduct sales ratio studies (36 M.R.S. § 328 (8)). Sales ratio studies are covered in Course PT103 – Valuation of Real Estate.

An assessment ratio measures the average relationship between the market value of properties as measured by sales price and the local assessment for those properties. In general, a property that was assessed for $70,000 but sold for $100,000, reflects a 70% assessment ratio for that property. The assessment ratio for an entire municipality, determined by the state, takes into consideration all arms-length sales of residential property in that municipality. The ratio of a municipality's total taxable value to its state valuation (the state-equalized measure of the total taxable value of the municipality) is the measure used for computing the assessment ratio for purposes of assessing standards. Uniform assessment practices are easier to achieve with values close to market levels because taxpayers can more easily judge the fairness of their assessment.

The quality rating is a measure of the uniformity of local assessing practices. It is a measure of the average difference between the assessment ratios of specific properties and the average assessment ratio for the municipality.

In 1976, the last year before the implementation of the standards, the average Maine municipality had a 44% assessment ratio and a quality rating of 42. In 2015, the average Maine municipality had an assessment ratio near 96% with a quality rating of about 13.

Revaluations

A revaluation means the development of new assessed values within a municipality through the creation of new land or building pricing schedules, reflective of market value on April 1 of the year in which the revaluation is implemented. This includes both (1) full revaluations, where new assessed values for all property in the municipality, including all taxable property and any exempt property subject to reimbursement by the State, are established; and (2) partial revaluations, where smaller changes such as updates to grading and pricing schedules or updates to assessed values for one or more types of property in the municipality are established. A revaluation does not include factoring, i.e., adjusting the existing values by a specific percentage..

Revaluation is the most common approach used to regain compliance with the statutory 70% minimum ratio requirement (36 M.R.S. § 327(1)), or to address inequities between property classes. Many times, municipalities hire professional assessment firms to perform revaluations. Any revaluation, however, falls under the jurisdiction of the municipal assessor whose judgment, as opposed to that of any hired appraiser, is final (30-A M.R.S. § 5722(7)).

Professional assessment firms performing revaluations in Maine are required to employ at least one Certified Maine Assessor and must agree to provide the municipality with information necessary to conduct future revaluations, such as detailed cost tables (36 M.R.S. § 330(1)). This information is also necessary to enable the assessor to properly explain the basis of a taxpayer's assessment and potentially make corrections between full revaluations.

The State Tax Assessor is required to develop and maintain a model contract for revaluation services (36 M.R.S. § 330(2)). The State Tax Assessor is also statutorily required to issue administrative rules relating to professional assessment firms (36 M.R.S. § 330(1)). A copy of the model contract and MRS Rule 208 – Guidelines for Professional Assessing Firms that Provide Revaluation Services to Municipalities, are available on the Property Tax website, at *www.maine.gov/revenue/propertytax*.

Real Estate Transfer Tax

A tax is imposed on each deed by which any real property in Maine is transferred (36 M.R.S. § 4641-A). The tax is imposed on direct transfers of property, as well as the transfer of any direct or indirect controlling interest in an entity that owns real property in the State. The tax is $2.20 for each $500 of the value of the property transferred and is imposed 50% on the grantor and 50% on the grantee. The Property Tax Division administers this real estate transfer tax.

Whenever a deed is offered for recording at a Registry of Deeds, it must be accompanied by a real estate transfer tax declaration of value form (36 M.R.S. § 4641-D). This form, requesting the selling price or value of the property, is sent to the assessor for the municipality where the transferred property is located. Certain transfers are exempt from this filing requirement. The selling prices allow an assessor to determine the current level of assessment relative to market value, to make projections of future assessment levels, and develop plans to update assessments to maintain compliance with the minimum requirements of the statutory assessing standards (36 M.R.S. §§ 326 – 331).

Primary Assessing Areas

Primary assessing areas are established by order of the State Tax Assessor; a copy of such an order is filed with the office of the Secretary of State (36 M.R.S. § 304). The State Tax Assessor is required to review primary assessing areas at least every ten years, and any municipality may withdraw from designation as a primary assessing area upon proper notice (36 M.R.S. § 303(1)).

The concept of primary assessing areas in Maine arose out of the need in the late 1960s to improve property tax administration by establishing jurisdictions of sufficient size and taxable resources to support efficient, competent, and equitable valuations. Achievement of these goals was to be based, in part, upon the assumption that a reduction in the number of assessing jurisdictions would decrease the likelihood of major inequities among municipalities. Although the Legislature did not enact laws encompassing many of these goals, the implementation of statutory assessing standards (36 M.R.S. §§ 326 – 331) and the expansion of training and certification programs (36 M.R.S. § 310 – 314) has brought about a realization of many of these earlier concepts. These enactments have also fostered the growth of educational programs sponsored by regional and statewide associations of assessing officers.

A primary assessing district is defined as a group of municipalities that combine valuation resources to support property tax administration by a properly trained staff of assessment professionals.

A primary assessing unit is a single municipality that has been designated as a primary assessing area. 'The unorganized territory, however, comprised of unincorporated townships accounting for half of the state's land area, is also designated as a primary assessing unit (36 M.R.S. § 302).

A municipal assessing unit is any town that is not designated as a primary assessing area. (36 M.R.S. § 303(2)).

CHAPTER 6

REAL ESTATE TAXES

General

All real estate in Maine is subject to taxation, unless specifically exempted by law. Real estate is assessed as of April 1, regardless of when the actual assessment work is done. All questions as to ownership, description, and valuation must be considered as of April 1 (Finance Authority of Maine v. Caribou) (36 M.R.S. §§ 502 & 708).

For purposes of taxation, and subject to the exemptions provided by law, real estate includes all lands in the state and all buildings, mobile homes, and other things affixed to the land, together with the water power, shore privileges and rights, forests, and mineral deposits belonging to the land. Real estate also includes power company lines, buildings, and mobile homes, even if on leased land or on the land of others. Finally, real estate includes non-exempt interests in real estate that is otherwise exempt from taxation (36 M.R.S. § 551).

Where and to Whom Real Estate is Taxable

Where real estate is taxable. Real estate must be assessed in the municipality where it is located (36 M.R.S. § 553). Assessors have no authority to assess taxes against any real estate lying outside the boundaries of the municipality in which they hold office, and assessors are personally liable for any assessment that they are not by law required to assess.

To whom real estate is taxable. Real estate may be assessed either to the owner or the person in possession thereof on April 1 (36 M.R.S. § 553). When real estate is assessed to the person in possession rather than to the owner, the person assessed should be identified in the assessment records as "tenant in possession" or "person in possession." An assessment to "persons unknown" is an inadequate identification.

A tax on real estate may be legal, even if the person to whom it is assessed may have been only a tenant in possession (Hobbs v. Clements). An assessment can also be made against a tenant in possession of part of an entire parcel (Murray v. Ryder). The court has ruled, for example, that where a person built a cottage on a lot of land under verbal permission of the landowner, that person became a tenant in possession of both and the cottage and land were rightfully assessed as real estate to him as tenant in possession (Foxcroft v. Straw).

The following are some special cases that assessors may encounter:

Bank Real Estate. Real estate (including vaults and safe deposit boxes) owned by a bank incorporated by the State of Maine, for conducting loan, trust, or banking business, is taxed in the place where the property is located and assessed to the bank. This does not apply to building and loan associations (36 M.R.S. § 560).

Bankruptcy. Real estate in bankruptcy should be assessed in the name of the owner and the bankruptcy trustee.

Bond for deed. Also known as a land installment contract, this is a contract only and not a transfer of actual title. Property must continue to be assessed to the owner and upon a later deed, transfer of ownership occurs.

Buildings on leased land. The Maine Supreme Court has specifically recognized the separation of interests in real estate (Portland Terminal Co. v. Hinds). When a building is located on leased land, or on land not owned by the owner of the building, the building should be assessed to the owner of the building and the land to the owner of the land. In no case should a building on leased land be assessed to the owner of the land if that person is neither owner nor occupant of the building.

The separation of various interests in property and the taxation to respective owners is a critical issue in certain exemption determinations that hinge on the use of property rather than ownership of property. For example, the Business Equipment Tax Exemption program exempts property used for a business purpose by the person in possession of it.

Condominiums and time-share estates. (33 M.R.S. chapters 10-A & 31), the Maine Condominium Act, defines a condominium to be real estate consisting of both separate and common ownership interests. Each unit of real estate is a separate parcel of real estate and must be separately assessed to the owner. The assessment should include the proportionate share of the real estate held in common, including the underlying fee interest in the whole property. The common interests may not be separately assessed unless a party has undivided development or reserved rights in the commonly held property.

A time-share estate is an interest in a unit of real estate consisting of the exclusive right to use, possess, or occupy the unit for a fixed period of time each year, for a certain number of years or indefinitely. Time-share interests are segmented into one week, two-week, or as much as quarter-year shares. Because several people will possess the unit during each year, the units are furnished and typically have membership rights vacation exchange organizations, and other costs and memberships that, although part of purchase price, are not part of the real estate interest being transferred. Assessors must carefully assess these properties so that personal property, membership services and costs associated with those services are not included in the valuation of the real estate.

Each time-share estate in the unit is a separate estate in real property and must be separately assessed including all interests held in common in the real estate. A municipality may enact an ordinance to require the manager of a time-share property to collect taxes from all time-share estates and submit these taxes to the municipality.

Deceased person's real estate. The undivided real estate of a deceased person, or decedent, may be assessed to the beneficiaries generally without designating any of them by name. Undivided real estate is property held by two or more people with no specific percentage assignment of interest, such as joint tenants (see "Jointly owned property" below). Without knowledge of the specific interest held by each person, the assessor is unable to separate property value or liability. If the assessor is notified that there is a personal representative for an estate, property not transferred to beneficiaries should be assessed to the personal representative in their fiduciary capacity. Tax on real estate should not be assessed to "the estate of" the decedent. Personal property tax, however, can be assessed to the estate of the decedent (see personal property tax on deceased people in Chapter 7).

If the personal representative notifies the assessor that he or she has no funds of the estate to pay such taxes and gives them the names of the beneficiaries and the proportions of their interests in the estate to the best of their knowledge, the real estate shall no longer be assessed to the personal representative (36 M.R.S. § 559). Assessment to beneficiaries in general or to the personal representative of an estate applies to undivided real estate. It would not apply to parcels of real estate specifically given by will to certain individuals (Bucksport v. Swazey).

If property is identified in a will, it must be assessed to the "devisees of" the decedent, to each beneficiary, or to the personal representative. If property is not described in a will, that property must be assessed to the "heirs of" the decedent, to each beneficiary, or to the personal representative (Gray v. Hutchins).

An assessment to the "devisees of" or the "heirs of" makes it extremely difficult to enforce a delinquent tax, since to foreclose the tax collector must identify each heir or devisee. A good rule to follow is to continue to assess the personal representative until notified of new ownership.

The important points about assessment of real estate of a decedent:

1) Never assess real estate to "the estate of" the decedent. Such an assessment is void.

2) Avoid assessing to "the heirs of" or "the devisees of" the decedent, if possible.

If a property owner dies after April 1, but prior to commitment, the assessment should still be in the name of the owner as of April 1 (Egery v. Woodard).

Former owner. The law provides that, barring notice of transfer, it is lawful for an assessor to continue to assess real estate to the person to whom it was last assessed, even if the ownership or occupancy of that property has changed (36 M.R.S. § 557). The Property Tax Division suggests that assessors try to avoid this provision. They should make an effort to keep the assessment records accurate and up to date. Transfers of real estate can be checked easily by keeping matching files of deeds (registries of deeds provide these monthly) and the Real Estate Transfer Tax Declaration forms, which the Property Tax Division provides. As an example of the risks involved in continuing to assess to the former owner of real estate, if assessment is continued, and the former owner dies prior to April 1, the assessment is invalid.

Forest lands not classified under the Tree Growth Tax Law. Any single tract of forest land greater than 25 acres under one ownership which is devoted to growing trees for commercial use must be assessed with consideration given to 36 M.R.S. §§ 563 & 564. Assessments must consider location and proximity to public facilities and the productivity of the land. If the owner can prove that an assessment creates incentive to abandon the land, strip the land, or operate contrary to the public policy of sustained yield harvesting, then the assessment will be held to be in excess of just value. The owner need only show that the tax burden is such that he or she is unable by efficient operation on a sustained yield basis to achieve an adequate annual net return commensurate with the risks involved. This rule appears to have been made ineffective by the passage in 1972 of 36 M.R.S. § 577 as part of the Tree Growth Tax Law under §§ 571 – 584-A.

Jointly owned property. A tenant in common or joint tenant may be considered sole owner for the purpose of taxation (36 M.R.S. § 555).

"Tenants in common" means each owner has a specific interest that can be sold or transferred independently.

"Joint tenants" means all owners own the property together. This ownership structure allows a property to automatically transfer to one of the parties upon the death of another. It is a good idea to note this in the assessment so that you can change the ownership when necessary. This property structure is referred to as undivided real estate (see "Deceased person's real estate" above).

Life tenant. A person who acquires or retains a life estate in real property is considered the owner of that property for the purpose of taxation, and the property should be assessed to the life tenant (Kelley v. Jones). An owner of a life estate may be eligible for a homestead exemption if they are otherwise eligible and certain additional qualifications are met.

Minors. Real estate owned by minors should be assessed to the minor unless the assessor has been made aware of a court-appointed guardian.

Manufactured housing. Manufactured housing (also known as manufactured homes), as defined in 10 M.R.S. §§ 9002(7)(A) or (C) except stock-in-trade or inventory, is taxable as real estate, but camper trailers are generally taxed as personal property. A stock-in-trade manufactured home is defined as one that is: (1) presently unoccupied; (2) not previously occupied at its present location; (3) not connected to water or sewer; and (4) is owned and offered for sale by a person or organization licensed for the retail sale of manufactured homes (36 M.R.S. § 655(1)(B)).

Mortgaged property. In cases of mortgaged real estate, the mortgagor (borrower), for taxation purposes, is deemed to be the owner, until the mortgagee (lender, such as a bank) takes possession, after which the mortgagee is deemed to be the owner (36 M.R.S. § 554).

Multiple owners. When partial interests in real property are transferred, a municipality may assess the major owner, et al. for the entire property or assess the individual ownership interest at the request of the owners. "Et al." is Latin for *and others* without specification.

Railroad buildings. The buildings of every railroad corporation or association, whether within or outside the located right-of-way, and any of the right-of-way that has been abandoned, are subject to taxation in the places in which they are located (36 M.R.S. § 561). Active railroad rights-of-way are exempt.

Resident and nonresident owners. Historically, assessment records were separated into resident and nonresident sections, a practice which facilitated assessment of personal property and tax enforcement proceedings. This separation of accounts also sometimes resulted in unequal assessment. Changes in the statutes have rendered this practice unnecessary.

Standing wood, bark, and timber. Whenever an owner of real estate notifies an assessor that any part of the wood, bark, and timber standing on the property has been sold by contract, in writing, and exhibits proper evidence, the assessor will assess such wood, bark, and timber to the purchaser and the land to the landowner (36 M.R.S. § 562). The Tree Growth Tax Law, under § 578(3) requires 10% allocation of value to the land and 90% value to the timber in cases where one person owns the land and another person owns the rights to the timber on that land. For land not enrolled in the Tree Growth Tax Law program, a municipality must determine the appropriate value division between the land and the timber.

Trust property. Property that is held in a trust is taxable to the trustee in the name of the trust. Assessors must be careful to have both the name of the trust and the name and address of the trustee or trustees for proper assessment of the tax. If there is more than one trustee, an assessment to any one of them is proper.

Unknown owner. In a case where an assessor, after reasonable diligence, cannot determine the owner of a property for at least the preceding 20 years, the real estate may be assessed to "unknown." Notice of the assessment and a description of the property are required to be published once a week for three consecutive weeks together with a statement that the assessment is the result of failure to locate the owner of record. A copy of this notice must also be sent to abutting landowners. If the owner remains unknown, the tax collector and treasurer must use the same procedures for notices required for tax lien certificates to complete collection of the tax (36 M.R.S. § 557-A).

Description of Real Estate

A municipality is, by law, given a claim against each parcel of taxable real estate to secure the payment of the tax assessed against that real estate. This claim is called a lien, and it comes ahead of any other claim against the property, with certain limited exceptions (36 M.R.S. § 552). This claim may be enforced in one of three ways provided by law: 1) by an action of debt with specific attachment (36 M.R.S. § 941); 2) by a tax auction sale, sometimes called the tax deed method (36 M.R.S. §§ 1071-1084); or 3) by recording a lien certificate in the registry of deeds sometimes called tax lien mortgage method (36 M.R.S. § 942). This lien is extremely valuable to the municipality; without it, it would be difficult to impossible to secure many real estate taxes.

To obtain the benefit of a lien, real estate taxes must be legally assessed.

A legal assessment requires that each separate parcel of real estate be separately assessed (36 M.R.S. § 708; Nason v. Ricker) and each parcel of real estate be adequately described in the valuation book (36 M.R.S. § 552). An inadequate description will not invalidate the tax, but may invalidate a lien (Davis v. Ellsworth; Johnson v. Dedham).

An action may be brought to recover a tax on real estate, where it is assessed as a fixed number of acres in a town, without other specific identity or description, although such a description is not sufficient to sustain a forfeiture of the property (Cressey v. Parks).

A lien to secure payment of legally assessed property taxes is created on the date the tax is assessed (36 M.R.S. § 552).

Separate assessments for different parcels. Assessors are required to separately determine the value of land and buildings for each parcel of real estate (36 M.R.S. § 708). However, since the property tax statute does not define parcel, except in the special case of current use valuation permitted under the Tree Growth Tax Law, a parcel is deemed to include a unit of real estate, notwithstanding that it is divided by a road, way, railroad or pipeline, or by a municipal or county line (36 M.R.S. § 574(B)). Because of this lack of definition, the court has addressed the issue of separate tax assessment of parcels in a variety of contexts.

A review of the more significant decisions below will provide insight into the court's interpretation of the statute. The legal principle underlying the necessity for the statute is clear. If separate parcels belonging to different people could be assessed together, then an owner could not determine their proper tax liability and could only protect their property interests by paying the entire tax.

The court has stated that: "much greater particularity and precision are always required when a forfeiture is sought to be enforced, than when a simple recovery is asked for." (Rockland v. Ulmer). The court has determined that more care must be taken to follow the law to the letter if taking property from the owner is at stake than in a simple dispute over the correct amount of tax.

For example, a taxpayer reported to the assessor that he owned separate lots of land which were neither adjoining, nor in any way connected with one another. Instead of making and listing separate assessments for each lot, the assessor appraised the three lots as a unit. The court rules, over the complaint of the landowner, that although this group appraisal might prevent a tax lien attaching to any of these lots, it did not increase the valuation or the tax burden of the landowner and therefore the single assessment against three separate lots was determined to be legal (Rockland v. Ulmer). Although the decision supported the practice of combining assessments in this case, it highlighted the enforcement limitations of such a practice and, therefore, its desirability. This interpretation was later reinforced when the court ruled that it is not necessary in an action to recover a tax that an assessment contain a particular description of the property assessed or that separate valuations should be made when there are several parcels, as in a case where forfeiture might ensue (Georgetown v. Reid).

In another case, assessors assessed the tax on certain woodland as a single parcel. The land was described as two lots in the deed, but formed a single tract of land with no marked line of division. A lien certificate was subsequently issued which described the land as one parcel and described the property by metes and bounds differently from the deed description for the two lots. The landowner claimed that this violated the separate parcel assessment required by 36 M.R.S. § 708. The court declined to adopt a rule requiring assessors to show separately described lots as separate parcels in the assessment list. Such a rule, the court stated, could conflict with the assessor's constitutional duty to assess property equally, according to its just value. There was no distinction in use between the two contiguous lots and the assessors had not acted contrary to law in assessing the land as one parcel of unimproved woodland (Fickett v. Hohlfeld).

Another court case involved a municipality which employed what was called the Abutting Property Program. The assessor of the municipality would generally value two adjoining lots under the same ownership as separate parcels. Under the Abutting Property Program and upon request by the landowner, municipal assessor would revalue the two parcels as if they were a single parcel, sometimes at a deep discount, however the assessor continued to assess the lots separately and separate tax bills were issued to the owner of the lots. The court ruled that the town's rationale for the Abutting Property Program was not reasonable. "Maine law does not permit the Town to engage in the fiction of treating separate smaller abutting lots as if they were a single … larger lot, which results in an assessment that does not reflect just value. (Petrin v. Scarborough).

Finally, and perhaps most insightful for parcel definition purposes, is the following decision. An unimproved tract of land was acquired through a deed describing the property by metes and bounds as a single tract. The lien certificate described the land as lots 14-35 and 14-36A as shown on the city's tax maps, but the assessors assessed a tax on the land as a single tract even though it was divided into two pieces by a public road and identified as two parcels on the tax map. The landowner argued that this violated the separate assessment statute for each parcel of real estate. The only evidence presented by the landowner was the presence of the public road and the tax map descriptions. The court found this insufficient to overcome the facts that the whole tract was of the same character and usage and the landowner had purchased it as a unit. The landowner had not met his burden of proving that the factual circumstances of the land were such as to make its assessment as a single parcel unlawful.

The court specifically rejected the idea that a single parcel may never, for tax assessment purposes, be divided by a public road. The mere presence of a road did not rebut the statutory presumption of regularity in assessing the land as a single parcel (Augusta v. Allen). If a contiguous tract of land, but for a road, is of the same ownership, character, and usage, a single assessment of the entire tract is valid despite the intervening road.

Although the court had previously ruled that a road may separate two separately assessed parcels under the same ownership, it did not suggest that land divided by a public road may never, as a matter of law, be assessed as a single parcel (McCarty v. Greenlawn Cemetery Assn.).

The rationale behind the statute requiring separate assessments for tax purposes does not prohibit assessors from ever treating land divided by a road, stone walls, streams, or other natural or man-made landmarks as a single parcel. The test for a single parcel determination is one of reason, subject to the presumption of regularity, but the land must constitute a functional unit. Although the existence of a public road dividing a tract is one factor to be considered in reviewing the reasonableness of an assessor's judgment, that factor without more does not necessarily require the tract to be treated as two parcels for tax assessment purposes (Augusta v. Allen).

The courts have recognized that assessors may properly exercise a reasonable amount of discretion in determining single parcels. If assessors have acted reasonably to place separate assessments on each parcel of real estate, the assessment will be upheld. The reasonableness of the assessor’s determination depends on the circumstances in each case and no single factor is always decisive. Some factors which may be considered are: 1) whether the property is of the same character and usage; 2) the way the property has been conveyed; and 3) the presence of roads or other natural obstructions which may split the property.

In the interests of completing collection of taxes through the lien procedure and allowing delinquent taxpayers to redeem real estate when the tax burden cannot be met, assessors should assess parcels in the smallest reasonable units.

A separate parcel of real estate is a parcel contained within one set of bounds. For example, a farm may be made up of parcels acquired at different times and from different people; but if the farm is owned and operated by one person, and is included within one set of bounds, it may be assessed as one parcel.

Likewise, a tract of land may be divided into house lots, but as long as all are owned by the same person, and are included within one set of bounds, the tract may be assessed as one parcel. It is recognized that a subdivision should be assessed individually.

If separately owned, however, two lots must be separately assessed to preserve tax foreclosure procedures. Although the Legislature has refrained from creating a statutory definition for a parcel, legislation passed in 1993 does allow that parcels divided by a road, powerline, or right-of-way may be valued as one parcel when each of the parcels contains five or more acres, the owner gives written consent that the parcels may be valued as one, and the owner certifies the parcels are not held for sale and are not subdivision lots. (36 M.R.S. § 701-A).

The bureau recommends that, whenever reasonable, land divided by a road or a natural obstruction such as a river, be assessed as separate parcels.

Complete and accurate description. Each statutory method by which a lien for taxes is enforced requires that the valuation book include a description of the real estate sufficiently accurate to identify it (36 M.R.S. § 552) (Fickett v. Hohlfeld). The description need not be as detailed as might be found in a deed, but it must be sufficient to enable an unrelated third party to identify the property with reasonable certainty, and it must be correct.

Three types of description are commonly used. The first is a description of the property by bounds; the second, by reference to a recorded deed; and the third, by reference to a plan or tax map.

1. **Description by Bounds.** The description by bounds identifies the property by describing the adjoining property on each side of the parcel, thus:

   "Land bounded on the north by land now or formerly of John Jones; east by Wilson Pond; south by land now or formerly of William Smith, and by land now or formerly of Ralph Adams; west by the North Road, so called."

2. **Description by reference to recorded deed.** The description by reference to a recorded deed refers to the book and page number and the name of the registry where the recorded deed is found. Care must be taken to inspect the recorded deed referred to. It must include the entire

description of the present property and include descriptions of any out deeds or additions thereto, complete with their individual deed references. If this is not complete, the description may be inadequate (Perry v. Lincolnville).

3. **Description by reference to a plan or tax map.** Other descriptions are proper such as a reference to a recorded survey map, plan, or to a tax map. Under certain circumstances, even though a tax map is not recorded in the registry of deeds, it can still be used, if there is notation in the valuation book as to where this map is available and provided further that the parcel described can be identified as that of a specific tax year. The tax map can describe the parcel by sheet, block and lot, or some other definite scheme such that there is no question as to which parcel is involved. When using a tax map identification, one of the other methods should also be used.

Although land must be valued separately from buildings, reference to buildings is not demanded by the lien certificate statute, since buildings pass with the land without any detailed mention or description (Gray v. Hutchins).

Current Use Assessments

The Maine Constitution authorizes the Legislature to provide for current use valuations of farms and agricultural lands, timberlands, open space lands that are used for recreation or the enjoyment of scenic natural beauty, lands used for game management or wildlife sanctuaries, and working waterfront land. It also requires imposition of a minimum penalty of five years back taxes which would otherwise have been assessed at the property's highest and best use, less all taxes paid over the period, plus interest, when land is removed from the above current use categories. The penalty assessment base cannot include the value of minerals if there is a state excise tax on those minerals (Article IX, section 8, subsection 2).

Tree Growth Tax Law. In 1971, the Tree Growth Tax Law was enacted to implement a current use assessment policy on forest land based upon its potential for annual wood production (36 M.R.S. § 571 - 584-A).

Forest land, for the purposes of the Tree Growth Tax Law, is land used primarily for the growth of trees to be harvested for commercial use, but does not include ledge, marsh, open swamp, bog, water, and similar areas, which are unsuitable for growing forest products for commercial use even though these areas may exist within forest lands.

Land that would otherwise qualify as forest land cannot be excluded merely because: 1) The land is also used for recreation; 2) Legal restrictions exist that limit commercial harvesting of the land or require a primary use of the land other than commercial harvesting; 3) Deeds, covenants, or organizational charters, in effect prior to January 1, 1982, restrict or prevent commercial harvesting; or 4) The land is, or has been, used for mineral exploration (36 M.R.S. § 573(3)).

Owners of parcels containing at least ten forested acres of land may apply, to the assessor in the town where the parcel is situated, for forest land classification under this current use assessment law.

For purposes of the Tree Growth program, a parcel is a unit of real estate that may be divided by a road, way, railroad or pipeline, or by a municipal or county line (36 M.R.S. § 574-B). In the case of common ownership of a parcel, unanimous consent of all owners is required to participate in the program.

Landowners must declare their eligibility by presenting evidence that they are complying with the following requirements:

1. The parcel contains at least ten forested acres.

2. The landowner must comply with the forest management and harvest plan developed under 36 M.R.S. § 574-B(1), and must submit, every ten years, to the municipal assessor in a municipality or the State Tax Assessor for parcels in the unorganized territory, a statement from a licensed professional forester that the landowner is managing the parcel according to schedules in the forest management and harvest plan (36 M.R.S. § 574-B). If the landowner does not submit a statement from a licensed professional forester by the ten-year deadline, the assessor will apply up to two separate $500 fines and, eventually, remove the land from the program and assess a withdrawal penalty.

3. When land taxed under the Tree Growth Tax Law is transferred to a new owner, within one year of the date of transfer, the new landowner must file with the municipal assessor or the State Tax Assessor for land in the unorganized territory one of the following:

    A. A sworn statement stating that a new forest management and harvest plan has been prepared; or

    B. A statement from a licensed professional forester that the land is being managed in accordance with the plan prepared for the previous landowner.

The new landowner may not harvest or authorize the harvest of forest products for commercial use until a statement described in paragraph A or B is filed with the assessor. A person owning timber rights on land owned by another person and taxed under this subchapter may not harvest or authorize the harvest of forest products for commercial use until a statement described in paragraph A or B is filed with the assessor. If the landowner does not comply with the one-year filing deadline, the assessor will apply up to two separate $500 fines and, eventually, remove the land from the program and assess a withdrawal penalty.

4. When a landowner is required to provide the assessor evidence of a valid forest management and harvest plan, the landowner must provide an attestation that either: 1) the primary use for the forest land is to grow trees to be harvested for commercial use; or 2) the land falls under a statutory exemption from harvesting (36 M.R.S. § 574-B).

Any parcel of more than 100 acres that is leased for recreational use is ineligible for classification under the Tree Growth Tax Law program if the lease payment is greater than the value under the Tree Growth Tax Law (36 M.R.S. § 574-A).

Determining compliance with forest management and harvest plan. Upon request of a municipal assessor or the State Tax Assessor and in accordance with section 579, the Director of the Division of Forestry within the Department of Agriculture, Conservation and Forestry may assist in evaluating a forest management and harvest plan to determine whether the plan meets the definition of a forest management and harvest plan in section 573(3-A) (36 M.R.S. § 575-A).

Reduction of parcels with structures; shoreland areas. If a parcel of land for which an owner seeks classification under the tree growth program contains a structure for which a minimum lot size is required under state law or by municipal ordinance, the owner in the schedule under section 579 shall apply the following reduction to the land to be valued under this subchapter.

Structures. For each structure located on a parcel for which a minimum lot size is required under state law or by municipal ordinance, the owner of the property shall exclude from the forest land subject to valuation under the tree growth program the area of land in the parcel containing the structure or structures, which may not be less than a half-acre.

Shoreland areas. For each residential structure on forest land located within a shoreland area, an area of land containing the structure of not less than a half-acre must be excluded. The excluded land must include 100 feet of shoreland frontage or the minimum shoreland frontage required by the applicable local zoning ordinance, whichever is larger. If the parcel has less than 100 feet of shoreland frontage, an area of land including the entire shoreland frontage must be excluded. This exclusion does not apply to a structure that is used principally for commercial activities related to forest products that have commercial value as long as any residential use of the structure is nonrecreational, temporary, and incidental to the commercial use (36 M.R.S. § 574-C).

The application must be filed on or before April 1 of the year for which classification is requested. Annual filings thereafter are not necessarily required; however, the landowner must update the forest management and harvest plan every ten years and must submit a statement from a licensed professional forester that the landowner is managing the parcel in accordance with that management and harvest plan. The assessor may also request the filing of a new application at any time giving 120 days written notice. Landowners must report any changes in land use of classified forest land (36 M.R.S. § 579).

The State Tax Assessor determines the 100% value per acre for each forest type (softwood, mixed wood, and hardwood) by region each year and promulgates the values into MRS Rule 202. These values are provided to municipal assessors each year and are published on the Maine Revenue Services website. The municipal assessors must use these values, adjusted by the municipalities' certified ratio. Areas other than forest land within any classified parcel are to be assessed on the basis of fair market value.

Landowners may, at any time, request withdrawal of a parcel or portion of a parcel by notifying the assessor that the land is no longer to be classified under the Tree Growth Tax Law. In the case of a portion of a parcel, a plan showing the withdrawn area must be filed. If forest land is no longer used primarily for the growth of trees to be harvested for commercial use, it should be reported by the landowner to the assessor. If the landowner fails to report such change and the assessor determines that the parcel no longer qualifies, the assessor will withdraw the land and assess penalties in addition to the withdrawal penalty.

When a portion of classified forest land, consisting of at least ten forested acres, is sold it continues under classified status until it is withdrawn. Within one year of the date of transfer, a purchaser must prepare a new forest management and harvesting plan or, if applicable, adopt by certification the written forest management and harvesting plan as prepared for the prior owner. If a parcel resulting from a sale is less than ten forested acres, then it must be withdrawn from classification, either prior to or as a result of, the sale. A withdrawal penalty is assessed against the seller of the parcel (36 M.R.S. § 581-A). See Withdrawal/Transfer below.

For more information, see Bulletin No. 19 – Maine Tree Growth Tax Law.

Farm and Open Space. The Farm and Open Space Tax Law, enacted in 1971, (36 M.R.S. §§ 1101-1121) provides for the valuation of land classified as farmland or open space land based upon its current use as farmland or open space, rather than its potential fair market value for other, more developed uses.

Farmland is any parcel of land, including woodland and wasteland, of at least five contiguous acres on which farming, agricultural or horticultural activities have produced a gross income of at least $2,000 per year in one of the two, or three of the five calendar years preceding the date of application for classification. Gross income may include the value of produce for farm household consumption (36 M.R.S. § 1102(4)). Land on which poultry houses sit does not qualify for current use valuation. However, the income from poultry operations on a farm unit may be used to qualify otherwise eligible land on that farm for current use valuation (Opinion of the Attorney General, April 10, 1978).

The owner of classified farmland must report to the assessor at least every fifth year, by April 1, the gross income realized for each of the previous five years.

An owner of farmland that meets all requirements except the gross income requirements may apply for a two-year provisional classification as farmland. If, at the end of the two-year period, the land still does not qualify, the penalty is equal to the taxes which would have been assessed had the property been assessed at its fair market value on April 1 for the two preceding tax years less the taxes paid during those years plus interest at the legal rate on those amounts which would have been payable (36 M.R.S. § 1109(2)).

Open space land is any area with no size threshold, although there is an upper limit of 15,000 acres per person (36 M.R.S. § 1114). Open space land includes state wildlife and management areas, sanctuaries, and preserves designated as such in Title 12. The preservation or restriction of the use of open space land must provide a public benefit by: (1) conserving scenic resources; (2) enhancing public recreation opportunities; (3) promoting game management; or (4) preserving wildlife and preserved woodlands (36 M.R.S. § 1102 (6)). In making the determination that the restriction or preservation of land under open space classification provides a public benefit, the assessor shall consider all facts and circumstances pertinent to the land and its vicinity. Factors appropriate for one application may be irrelevant in determining the public benefit of another application. Specific factors to consider when determining qualification for open space valuation are included in Bulletin No. 21 – Open Space Tax Law and 36 M.R.S. § 1109(3). Any property established as a wildlife sanctuary by the Legislature is entitled to current use classification as a matter of law and the landowner need only make application to the assessor. Simultaneous beneficial or even profitable uses of open space property that are consistent with open space status (for example, a public water supply) are not fatal with respect to current use eligibility (Augusta Water District v. Readfield).

If a parcel of land for which the owner is seeking classification as open space contains structures or other improvements that are inconsistent with the preservation of the land as open space, the owner, in the application for the program, must exclude from open space classification a parcel of land that includes those structures or other improvements. The excluded parcel must: 1) be no smaller than the State minimum lot size as prescribed in 12 M.R.S. § 4807-A; 2) be no smaller than the minimum lot size for the municipality; or 3) contain the minimum shoreland frontage required by the minimum guidelines established pursuant to 38 M.R.S. §§ 435 – 449 or the applicable local zoning ordinance, whichever is largest.

Owners of farmland or open space land may file an application prescribed by the State Tax Assessor by April 1 of the year in which classification is first requested. Annual filing is not required; however, the assessor may request the filing of a new application at any time, and it is advisable to do so whenever a change in ownership occurs. Assessors must notify applicants of classification status by June 1 of that year. Landowners must notify the assessor of any change in farm or open space land classification. Assessors may reclassify land for good cause. Good cause is usually defined as a justifiable reason and it is up to the assessor to determine the criteria for good cause. In any event, the determination of good cause must be applied fairly to all residents in similar situations.

The assessor for each taxing jurisdiction must establish the 100% values per acre based on the current use of classified lands. The values cannot reflect development or market value purposes other than agriculture, horticultural, or open space use and cannot reflect value attributable to road frontage or shore frontage.

Farmland values are based on the following considerations: farmland rentals, farmer-to-farmer sales, soil types and quality, commodity values and topography. Guidelines and suggested values for cropland, orchard land, pasture land, and horticultural land are prepared by the Department of Agriculture, Conservation and Forestry (36 M.R.S. § 1119). The assessed value is arrived at by the assessor adjusting the 100% value per acre for farmland by the municipality's certified ratio (36 M.R.S. § 1108(1)).

The value of open space land is the sale price that open space parcel would command in the marketplace if it were required to remain in the category or categories of open space land for which it qualifies pursuant to 36 M.R.S. § 1102(6). An alternative valuation method recognizing varying percentage reductions for different categories of encumbrances of open space land (36 M.R.S. § 1106-A(2)) is also available to assessors and is more fully described in Property Tax Bulletin No. 21 – Open Space Tax Law.

Areas in a parcel other than qualifying classified lands are valued on the basis of fair market value. Forest land within a farmland classified parcel is valued using the 100% valuations per acre established according to the Tree Growth Tax Law. Forest land within an open space parcel is valued using an open space value.

The sale of a portion of a parcel of classified farmland or open space land does not affect its eligibility for continued classification unless the farmland does not meet the minimum acreage requirement (36 M.R.S. § 1115).

For more information, see Bulletin No. 20 – Farmland Tax Law and Bulletin No. 21 – Open Space Tax Law.

Working Waterfront Land. The Current Use Valuation of Certain Working Waterfront Land law, enacted in 2007, establishes a current use valuation allowance for waterfront land being used for commercial fishing activities. "Working waterfront land" means a parcel or portion of a parcel of land abutting tidal waters or is in the intertidal zone (located between the high and low water mark) the use of which is more than 50% related to providing access to or in support of the conduct of commercial fishing (including commercial aquaculture) activities.

Working waterfront land used predominantly (more than 90%) as working waterfront is eligible for a 20% reduction from just value. Working waterfront land used primarily (more than 50%) as working waterfront is eligible for a 10% reduction from just value. Working waterfront land that is permanently protected from a change in use through deeded restriction is eligible for an additional 30% reduction.

Withdrawal and transfer

Withdrawal. Whenever land is withdrawn from the program (except through the exercise – or threatened exercise – of eminent domain, or sale of the property to the municipality, State, or federal government), a penalty applies to the withdrawn land. The penalty is the greater of:

1) the taxes that would have been assessed for the past five years, less taxes paid, plus interest for those five years; and

2) a of the difference between the just value of the property on the date of withdrawal and the current use value of the classified land on the assessment date immediately preceding withdrawal.

Usually, option 2 will produce the greater penalty. The percentage applied to option 2 depends on how long the land has been in the current use program. The following schedule provides the penalty percentages that must be applied (36 M.R.S. § 581):

10 or fewer years	30%	16 years	24%
11 years	29%	17 years	23%
12 years	28%	18 years	22%
13 years	27%	19 years	21%
14 years	26%	20 years or more	20%
15 years	25%		

Just value at the time of withdrawal is determined by the assessed value of comparable property that is not valued on a current use basis in the municipality, adjusted by the certified ratio. The current use value is the assessed value of the property adjusted by the municipality's certified ratio in the year of withdrawal.

It is the obligation of the owner of current use classified land to report to the assessor any change that may impact the assessed value of the land. If a landowner fails to report the change of use or change of forest type, the assessor will charge a penalty equal to the taxes that should have been paid plus the withdrawal penalty under § 581 plus an additional penalty equal to 25% of the withdrawal penalty. The municipal assessor may waive the 25% penalty for cause (36 M.R.S. § 579). Cause is usually defined as a justifiable reason, and it is up to the assessor to determine the criteria for cause. The determination of cause must be applied fairly to all residents in similar situations.

Transfer. If a landowner changes the use of property in a current use program, the owner may have the option to transfer that property to another current use program rather than incur a withdrawal penalty. For example, an owner of land in the tree growth program decides to stop harvesting timber on that land. That owner may be able to transfer the land to open space if the land qualifies for that current use program. If the owner subsequently withdraws the land from the open space program, the number of years the land was in the tree growth program will count toward the total time in current use for purposes of calculating the withdrawal penalty.

Historic and Scenic Preservation. 30-A M.R.S. § 5730. The Maine Constitution, under article IX, section 8, subsection 5, allows a municipality to reduce the property tax on real estate with historic integrity, providing a scenic view, or designated as an important structure. The tax reduction must be in accordance with a municipally adopted program.

Municipal Voluntary Farm Support. 7 M.R.S. §§ 60 – 60-A. A municipality may enact a program to reduce the tax burden of farmers in exchange for a 20-year easement granted to the municipality.

Limitations on Land Use

The use of land may be legally limited in many ways. These limitations may be of importance to assessors in that they can either positively or adversely affect value. Governments may impose limitations through zoning, environmental protection, housing codes, subdivision, or regulations. Property rights may also be limited by restrictive covenants in deeds, liens, or easements. These limitations are called encumbrances and are interests in land that must be considered when making an assessment. Except for easements, all encumbrances affect only the property restricted. In the case of easements, two or more properties may be directly affected by the terms of the conveyance.

Zoning. Zoning regulations are rules adopted by communities to determine the size of lots and the type and use of buildings in a specific area of the community. The effect of zoning is to keep areas of residential, commercial, and industrial uses separate. Zoning regulations can assist the assessor in determining areas with similar building use for developing cost manuals and conducting sales ratio studies. Zoning regulations may have a substantial effect on the value of properties within a zone.

Deed Restrictions. These restrictive covenants are placed in deeds often by developers to maintain consistent uses in a subdivision. Other restrictions may include those placed on commercial retail properties. Common restrictions concern the size of building to be built, the minimum setback of the building from the street, and, where there is no zoning, the use of the property. These restrictions tend to enhance the values of properties affected because they are normally used to set minimum standards for development.

Liens. These are either voluntary or involuntary restrictions or claims against a property, usually to secure payment of a debt. Most liens, whether created in mortgages or securing other indebtedness, have little or no effect on the values of the properties restricted.

<u>Easements</u>. An easement is the right of one owner of land to make lawful and beneficial use of the land of another, created by an express or implied agreement. Such use must not be inconsistent with any other uses that are already being made of the land, or inconsistent with zoning, subdivision, or other municipal regulation in force at the time of the creation of the easement. Easements include a dominant estate, the land that benefits from the terms of the easement, and a servient estate, the land that is subject to restriction imposed by the easement.

In developing just value of estates, assessors must consider the effect upon value of an enforceable restriction of the servient estate or benefit to the dominant estate which results from the creation of an easement. The just value of land is properly considered within the context of legally permissible uses of the land only (36 M.R.S. § 701-A).

An easement may be created by a separate conveyance, which may be recorded in a registry of deeds, as a clause in the conveyance of land either benefited or restricted by the easement. Easements may also be created by will, and in some cases inferred by circumstances or necessity. Written conveyances are not considered deeds subject to the Real Estate Transfer Tax (36 M.R.S. § 4641(2)) since such an instrument conveys no title to real estate. Generally, easements can be terminated only by agreement of the parties, abandonment, merger of the dominant and servient estates, conveyance, or eminent domain. An affirmative easement allows the dominant estate certain access to the servient estate. A negative easement allows the dominant estate to restrict the servient estate's activities on its own land.

<u>Easement effect on value.</u> Easements on land are not ordinarily taxable separately. The tax situs of an easement is the place where the land lies to which it pertains or out of which it is created. The servient estate, on which a restriction has been imposed, must be assessed at its value subject to the restriction. The dominant estate, for which the benefit of the easement exists, should be assessed at its value including that benefit.

Each easement must be analyzed to determine how its terms affect the just value of each property affected by that easement. For instance, an easement that allows one property to have the right to use the driveway of another property may well have an impact on both properties' valuation. The assessor must judge the specific results of an easement and its effect on value. Easements can increase, decrease, or have no effect on the value of properties.

Conservation easements may limit the highest and best use of property by restricting the size or number of structures that may be constructed on a parcel. This could decrease the just value of the property. Other easements that reduce the freedom of the landowner to enjoy full use of their property do not generally increase the just value of restricted land, but may increase the value of the estate creating the restriction. A forever wild conservation easement, which prohibits any structures or land improvements on otherwise developable land, may substantially reduce the just value of a property. Easements granted for road or utility rights-of-way may affect parcels differently. Availability of electrical power in most situations would increase the value of land benefiting from it. However, a right of way for power lines to cross above a property would probably reduce the value.

The land, buildings, and microwave towers or similar towers owned by telecommunications service providers are taxable as real estate where they are situated.

Maine Municipal and Rural Electrification Cooperative Agency (35-A M.R.S. § 4135). All real and personal property of the Maine Municipal and Rural Electrification Corporation Agency is subject to taxes to the same extent as real and personal property owned by other electric utilities.

Property Tax Deferral

The State's property tax deferral program, effective beginning with the April 1, 2022, tax year, allows a qualified individual who is at least 65 years old or unable to work due to disability to defer the property taxes assessed on the individual's primary residence. The State reimburses each municipality for taxes forfeited. When a property is withdrawn from the program, the owner pays back taxes and interest to the State.

Property Tax Stabilization

The law allows certain senior residents to stabilize, or freeze, the property taxes on their primary residence. An applicant must be at least 65 years old, a permanent resident of Maine, and must have owned a Maine homestead for at least ten years. As long as the individual files an application each year, the tax is fixed at the amount assessed in the year prior to the initial application. Eligible residents may transfer the fixed tax amount to a new homestead, even between municipalities. The State will fully reimburse municipalities for forfeited revenue. The Property Tax Stabilization Program was sunset by the Legislature for tax years beginning on or after April 1, 2024.

CHAPTER 7

PERSONAL PROPERTY TAXES

All personal property owned by Maine residents, except where exempted by law, is subject to taxation. Personal property of nonresidents, with certain exceptions, is also subject to taxation if the property is located in the state on April 1 (36 M.R.S. § 602).

Assessment date. As is the case with real estate, personal property is taxed as of April 1 (36 M.R.S. §§ 502 and 708).

Personal property defined. Personal property is all property that is not real property, including tangible and intangible property. Maine taxes tangible personal property, but does not tax intangible property (36 M.R.S. § 601). Municipalities may not tax personal property located and legally taxed outside of Maine.

Individually owned personal property with a just value of less than $1,000 is exempt from tax, with the exception of property used for business and vehicles which are not subject to vehicle excise tax.

The excise tax on watercraft is imposed in lieu of all property taxes on watercraft (36 M.R.S. § 1502).

Where and to Whom Taxable

The general rule. All personal property in Maine or temporarily out-of-state is assessed where the owner resides on April 1 (36 M.R.S. §§ 502, 602, and 708). Personal property is taxed in this manner to prevent certain kinds of property, held and managed at a location other than the owner's residence, from escaping taxation. (Dead River Co. v. Houlton).

Exceptions to general rule. Although all personal property is generally taxable by the owner's municipality of residence including, for example, un-excised motor vehicles and farm tractors, there are exceptions in the statute, including a specific exception for persons and corporations residing outside of the state (36 M.R.S. § 603). These are the only exceptions to the general rule found in 36 M.R.S. § 602 (Lewiston v. Tri-State Rubbish).

1. **All personal property** employed in trade, in the erection of buildings or vessels, or in the mechanical arts, is taxed in the place where the property

is used, as long as the owner or the owner's agent, has a physical location in the municipality where the property is used. (36 M.R.S. § 603(1)).

2. **Cargo Trailers** are taxed in the place where the cargo trailer is usually based and where it regularly returns for repairs, supplies and activities related to its use (36 M.R.S. § 603(1-A))

3. **The following items** of personal property are taxed in the place where situated on April 1 (36 M.R.S. § 603(2-A))

   a) Portable mills;

   b) All store fixtures, office furniture, furnishings, fixtures, and equipment:

   c) Professional libraries, apparatus, implements, and supplies, including items such as mobile MRI units;

   d) Coin-operated vending and amusement devices;

   e) All camp trailers as defined in 36 M.R.S. § 1481; and

   f) Television and radio transmitting equipment.

4. **Personal property of nonresidents** is taxed in the place where it is employed either to the owner, to the person in possession, or to the person owning or occupying any store, storehouse, shop, mill, wharf, landing, shipyard, or other place where such property is located. A lien is created on such property for the payment of the tax that may be enforced by the tax collector to whom the tax is committed, by the sale of such property as provided. A lien is also created on such property on behalf of the person in possession so that he or she can recover from the owner what he or she owes (36 M.R.S. § 603(3)).

5. **People under guardianship.** Personal property belonging to minors under guardianship is taxed to the guardian in the place where the guardian resides. The personal property of all other people under guardianship is taxed to the guardian in the place where the ward resides (36 M.R.S. § 603(6)).

6. **Partners in business.** Personal property of partners in business, when subject to taxation under 36 M.R.S. §§ 603(1) and (2), may be taxed to partners jointly under their partnership name; and in such cases, they are

liable for the tax as a group and individually (joint and several liability) (36 M.R.S. § 603(7)). The sections cited refer to personal property employed in trade or in the mechanic arts, as well as to portable sawmills, mobile homes, store and office fixtures and furniture, coin-operated vending, or amusement devices, and television and radio transmitting equipment.

If the partners have places of business in two or more locations, they should be taxed in each location for the portion of property employed there. If any of the property is situated in a place other than where their business is, and if the partners or their agents occupy any store, storehouse, shop, mill, wharf, landing place, or shipyard there, they should be taxed in that location.

7. **Unknown people.** If the owner of personal property is unknown, it is taxed to the person possessing the property. A lien is created on this property on behalf of the person in possession, which he or she may enforce for the repayment of all sums by him or her paid in discharge of the tax (36 M.R.S. § 603(8)).

8. **Certain corporations.** The personal property of manufacturing, mining, smelting, agricultural, and stock raising corporations, and corporations organized for buying, selling, and leasing real estate shall be taxed to the corporation or to the person having possession of its property in the place where the personal property is kept, except as provided in §§ 603(1) & (10) (36 M.R.S. § 603(9)).

9. **Deceased people.** The personal property of deceased people should be assessed to the personal representative of the decedent (or to the estate of the decedent if a personal representative has not been appointed) in the place where the decedent last resided, if in the state, until the personal representative gives notice to the assessor that the property has been distributed. If the decedent at the time of their death did not reside in the state, personal property must be assessed to the personal representative in the place where the property is situated on April 1 (36 M.R.S. § 605). Assessing personal property to the estate of the decedent differs from assessing real property when the owner is deceased (see Deceased Person's Real Estate in Chapter 6).

10. **Religious societies.** Taxable personal property held by religious societies should be assessed to the entity's treasurer in the municipality where they usually hold their meetings.

11. **Mortgaged personal property.** When personal property is mortgaged, it is deemed to be the property of the person who is in possession of it (36 M.R.S. § 604).

12. **Personal property brought into Maine after April 1.** Personal property brought into Maine after April 1 and prior to December 31, by any person upon whom no personal property tax has been assessed, is taxed as other personal property in the municipality in which the property is used for the first time in this state (36 M.R.S. § 611).

Description of Personal Property

Valuation books may contain a column for each general type of personal property, in which the value, and sometimes the quantity, is entered. Computerized valuation systems may use codes to identify categories of personal property, and have supporting supplemental records. Any property codes used should be clearly identified in the valuation book, preferably on the title page.

There are several reasons why personal property should be described in some detail in the valuation book or on the supporting record. One is in the case of mortgaged personal property. A specific description of the property may enable the tax claim to be assessed ahead of the mortgage claim. Once a mortgagee or other secured party legally obtains possession of property, the power of the tax collector to seize (distrain) it is lost and the seizure must be for the specific property taxes. If the property is mortgaged, the collector cannot seize it unless it has been specifically and adequately described (Howard v. Augusta). Another reason is for accurate identification of property that is subject to the Business Equipment Tax Reimbursement program or the Business Equipment Tax Exemption program (See below). The assessed personal property must appear in the valuation book; and the description must meet the requirements of the Uniform Commercial Code (11 M.R.S. § 9-1504).

Business Equipment Tax Exemption ("BETE") Program

Qualified business property first placed in service in Maine after April 1, 2007 is eligible for exemption from personal property taxes under the BETE program. Application for BETE must be made each year by May 1 with the assessor in the municipality in which the property is taxable.

Qualified business property means property used or held exclusively for a business purpose and subject to an allowance for depreciation. Qualified business property does not include land or buildings; however, it does include property affixed or attached to a building or other real estate if it is used to further the particular trade or business activity taking place at that location. It does not include components or attachments to a building if used primarily to serve the building; for example, standard heating, air conditioning, plumbing, or lighting systems. It also does not include land improvements typically made to further the use of the land; for example, driveways, parking lots, or fences.

Types of equipment excluded from eligibility for exemption:

1. Office furniture (such as tables, chairs, desks, bookcases, filing cabinets, and modular office partitions) and lamps and lighting fixtures.

2. Gambling machines or devices, including any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gambling activity.

3. Telecommunications personal property or property used to support a telecommunications antenna used by a business subject to the state telecommunications excise tax under 36 M.R.S. § 457.

4. Natural gas pipeline including pumping or compression stations, storage depots, and appurtenant facilities used in the transportation, delivery, or sale of natural gas. (Note that a pipeline less than one mile in length owned by a consumer of natural gas may be eligible property).

5. Property used to produce or transmit energy primarily for sale.

6. Property located at a retail sales facility and used primarily in a retail sales activity.

7. Property that qualifies for a property tax exemption under any other provision of law.

8w. Pollution control facilities that are entitled to exemption under 36 M.R.S. § 656 (1)(E).

The property owned or used by certain businesses is also excluded from exemption. Those excluded persons include:

1. Public utilities,

2. Businesses providing radio paging services,

3. Businesses providing mobile telecommunications services

4. Cable television companies

5. Businesses providing satellite based direct television broadcast services, or

6. Businesses that provide multichannel, multipoint television distribution services.

Retail Property Exclusion from BETE

Except for a very limited number of retail businesses, retail business equipment is not eligible under the BETE program.

Retail business equipment excluded from BETE is defined as property:

1. Located at a retail sales facility; and

2. Used primarily (more than 50% of the time) in a retail sales activity.

A retail sales facility is a structure used to serve customers who are physically present at the retail facility to select and purchase or rent tangible personal property. “Retail” means a transaction between the seller and the purchaser for consumption or use, and not for resale, by the purchaser. The sale of services is not considered a retail sale.

Only property that is used primarily in retail sales activity is excluded from the exemption. If property located at or near a retail sales facility is not used primarily in a retail sales activity, then it is eligible for exemption. Thus, each piece of property at the facility must be examined to determine whether it is used “primarily” in a retail sales activity.

In summary, most retail business equipment placed in service after April 1, 2007, will not be eligible for the BETE exemption, but may be eligible for reimbursement under the Business Equipment Tax Reimbursement program (see below). Businesses whose property is excluded from BETE in most circumstances are retailers of tangible goods.

Business Equipment Tax Reimbursement ("BETR") Program

The personal property tax paid on qualified business property first placed in service in Maine after April 1, 1995, and on or before April 1, 2007 may be completely or partially reimbursed by the State Tax Assessor upon proper application of a taxpayer. Additionally, certain retail property placed in service after April 1, 2007 is eligible for reimbursement of property taxes paid (36 M.R.S. §§ 6651 - 6664).

The definition of eligible business equipment is generally the same as the BETE program: equipment that is subject to depreciation and used specifically for a business purpose in Maine. The major difference in qualified equipment is that retail business equipment is eligible for reimbursement under the BETR program. Certain entities such as public utilities, telecommunication and cable television companies, and certain property such as office furniture, lighting, and gambling equipment do not qualify for either program. Any property eligible for the BETE exemption is not eligible for the BETR program.

Any business taxpayer paying tax on qualified property placed in service after April 1, 1995 is entitled to a reimbursement for all or some of the property tax paid. Application for this reimbursement must be made on forms authorized by the State Tax Assessor.

CHAPTER 8

EXEMPTIONS

Fundamental Concepts

Generally, all real estate located within the state, all personal property of residents of the state, and certain personal property of nonresidents, is subject to taxation at the local level. Certain classes of property, however, are statutorily exempt from taxation, either fully or in part. Property is exempt based on its ownership, its nature, or its use. Taxation is the rule and exemption the exception, meaning that property is taxable unless it is specifically exempt by law (<u>Owls Head v. Dodge</u>). A property exemption must fall strictly within the purpose and intent of the statute and the burden of proving qualification for exemption rests with the property owner. Tax exemption statutes must be strictly interpreted. Any uncertainty as to exemption should be weighted in favor of taxation (<u>Silverman v. Alton</u>). Interpretation of the law must, however, maintain a reasonable standard.

<u>Municipalities cannot create exemptions.</u> The only exemptions that can be granted are those provided for by state or federal law. A municipality has no authority to enact exemptions or abatements (<u>Delogu v. City of Portland</u>), and if it attempts to do so, the assessor is not bound by such a vote (<u>Thorndike v. Camden</u>). The assessor is not under the direction of the municipality when performing their statutory duties. No municipal officer other than the assessor has authority to exempt any person or property from taxation. Because only the assessor has authority to grant exemptions, he or she must be a party to any action regarding tax exemptions to enable a court, if necessary, to order the assessor to grant exemption (<u>Bristol v. Eldridge</u>). If an assessor is not named in an abatement appeal, the court cannot compel that assessor to grant an exemption.

The assessor should request written evidence from any person or organization claiming exemption. Until proof of eligibility is furnished, the assessor is justified in refusing the exemption.

<u>Listing exempt real estate.</u> Exempt real estate should be included in the valuation book, separately from the list of taxable property. Assessors are required to include and value exempt real estate in their inventory of property at least every five years (36 M.R.S. § 707). If this is done annually, it is relatively easy to record any change of use or ownership that may result in a return of the real estate to taxable status.

Public Property

United States Government (1 M.R.S. § 16 and 36 M.R.S. § 651(1)(A)). Property owned by the United States, insofar as the U.S. Constitution and laws of the United States prohibits taxation, is exempt. Exemption includes courthouses, army posts, V.A. hospitals, lighthouses, post offices, and other public buildings together with their land, national parks, and forest preserves. Not all federally owned property is exempt. The real estate of many federal institutions is taxable according to provisions of the acts incorporating them. Property rented by the United States, such as some post office buildings, is taxable. Maine's Attorney General has determined that property of the American National Red Cross is exempt under 36 M.R.S. § 651(1)(A) (Opinion of the Attorney General, February 16, 1982).

State of Maine (36 M.R.S. § 651(1)(B)). All property owned by the State of Maine is exempt from taxation. Property rented or leased by the State is taxable. Although the University of Maine is a separate corporation chartered by the state, the Legislature designated the university as an agency of the state and its property is exempt from tax.

When Maine became a state, the Articles of Separation from Massachusetts provided that all lands previously granted by Massachusetts to any religious, literary, or charitable organization would be exempt from taxation as long as the land continued to be used by these organizations. These lands retain their exempt status (36 M.R.S. § 651(1)(C), Articles of Separation, Article Seventh, Section 1).

Finance Authority of Maine (10 M.R.S. § 980). Property acquired, held, or transferred by the Finance Authority of Maine (FAME) is exempt from all taxes and special assessments. FAME may agree to make payments in lieu of taxes to the appropriate municipality.

Maine Health and Higher Education Facilities Authority (22 M.R.S. § 2067). Property owned or used by the Maine Health and Higher Education Facilities Authority or its agent is exempt from property tax.

Maine Turnpike Authority (23 M.R.S. § 1971). Maine Turnpike Authority (MTA) property is exempt from property taxes, except that businesses that lease property from the MTA are taxable to the extent of their leasehold interest in that property. The Law Court has further ruled that the use of tax-exempt property by a private party does not defeat the exemption if the private party's use is the public use underlying the exemption (Howard D. Johnson Company v. King).

Military property (37-B M.R.S. § 306). All real and personal property in Maine that is owned or leased by a municipality or an organization of the state military forces and used for military purposes is exempt from taxation.

Soil and water conservation districts (12 M.R.S. § 6(3)). The property of soil and water conservation districts is exempt from taxation.

New Hampshire (36 M.R.S. § 651(1)(B-1)). Real property owned by the Water Division of the New Hampshire Department of Environmental Services and used for the preservation of recreational facilities in Maine is exempt from taxation.

Municipalities (36 M.R.S. § 651(1)(D)). Generally, the property of any municipality (public municipal corporation) of Maine that is used for public purposes, if located within its corporate limits and confines, is exempt. Public municipal corporations include counties, cities, towns, plantations, village corporations, fire districts, water and sewer districts, and school districts. Only property dedicated to public use is exempt (Camden v. Camden Village Corp). Public use has been defined to mean the supplying of governmental services or furnishing facilities for its citizens for matters of public necessity, convenience, or welfare that is appropriate and necessary for government to provide (Greaves v. Houlton Water Co.). Property that a municipal corporation holds in trust for the purposes of its incorporation is exempt.

Land owned by one municipality and located in another is generally not exempt under this statute. However, the following property of a public municipal corporation is still exempt if located outside the limits of a public municipal district:

> The pipes, fixtures, hydrants, conduits, gatehouses, pumping stations, reservoirs, and dams, used only for reservoir purposes, of public municipal corporations engaged in supplying water, power, or light, if located outside of the limits of such public municipal corporation;
>
> The pipes, fixtures, conduits, buildings, pumping stations and other facilities of a public municipal corporation used for sewage disposal, if located outside the limits of such public municipal corporation; and
>
> Airports and landing fields, including buildings, no matter where they are located. Any structures or land contained within such airport not used for airport or aeronautical purposes shall not be entitled to this exemption (Owls Head v. Dodge). Any public municipal corporation that is required to pay taxes to another such corporation shall be reimbursed by the county where the airport is located (36 M.R.S. § 651(1)(F)).

Cemetery corporations, burial (13 M.R.S. §§ 1141 - 1143 and 1301). The property of public cemetery corporations incorporated under the laws of Maine are exempt from taxation. Private cemetery lots, family burying grounds, tombs, and rights-of-burial are subject to tax, but are exempt from attachment for lien and foreclosure.

Refuse disposal districts (38 M.R.S. § 1704). The property (except land) of a refuse disposal district is exempt from taxation. Districts are subject to service charges and may elect to make payments in lieu of taxes.

Municipal or regional transportation districts (30-A M.R.S. § 3511). The property operated by a district or leased to a private operator for providing mass transportation is exempt from taxation.

Revenue producing municipal facilities (30-A M.R.S. Chapter 213). The Legislature has determined that certain revenue-producing municipal facilities provide essential governmental functions. Municipal facilities acquired or constructed under authority of the Revenue Producing Municipal Facilities Act constitute public property used for a public purpose. Municipalities cannot be required to pay any taxes or assessments on a parking facility or system, water or sewer system, telecommunications system, revenue-producing municipal facility, or any part of such a system, whether located within or outside the corporate limits of the municipality (30-A M.R.S. § 5413). This exemption does not, however, extend the exemption to any lessee or person in possession of all or part of a parking facility.

Property leased by a school administrative unit (20-A M.R.S. § 4001(3)(C)). Leased property is considered property of the unit in all respects. This has been interpreted to mean that property leased by school administrative units, including portable classrooms, is exempt from property taxation (Memorandum of Attorney General, Nov. 22, 1988).

Property of Institutions and Organizations

Benevolent and charitable institutions (36 M.R.S. § 652(1)(A)). The real estate and personal property owned and occupied, or used solely for their own purposes, by benevolent and charitable institutions is exempt from taxation. The Law Court has determined that the terms "benevolent" and "charitable" are synonymous (Maine AFL-CIO Housing Development Corp. v. Madawaska). For brevity, this section will refer to charitable institutions, which encompasses both terms. The exemption cannot be denied because of the source of the organizations' funds, or because of any limitations in the classes or persons for whose benefit they are applied. However, while an exemption denial may not be based on the source of an institution's revenue, a denial can be based on "the ultimate beneficiaries of the organization's services." (Credit Counseling Centers v. South Portland).

The court has also stated that “neither a non-profit corporation’s religious purposes nor its corporate affiliation with religious organizations remove it from the purview of real estate exemption statute for charitable organizations.” (Lewiston v. Marcotte Congregate Housing). In Salvation Army v. Standish, the court held that the “Christian Faith is an integral part of the organization, but that fact alone does not contradict its benevolent and charitable purpose.” However, real estate owned by an organization that is neither occupied solely for the organization’s own purposes, nor occupied by another exempt organization (36 M.R.S. § 651(1)(J)), is taxable in the jurisdiction where it is located. To be exempt, an organization must “bring its claim unmistakably within the spirit and intent of the act creating the exemption” (Holbrook Island Sanctuary v. Brooksville).

An exception to the use rule exists in the situation where an institution occasionally uses a part of its property for purposes other than that for which it was incorporated. This occasional use for non-charitable purposes must be incidental, must not interfere with the institution’s regular operation, and must generate only a de minimis revenue. The Maine Supreme Court has not established the upper limit of what it considers de minimis, but it has ruled that revenue representing 1% of an entity’s operating budget is acceptable. (Hebron Academy, Inc. v. Hebron).

An entity that owns land qualifying for reduced valuation under the open space program is not necessarily prohibited from eligibility as a charitable institution. The Law Court has found that: 1) conservation of natural resources is a declared goal of the state; 2) charitable activity is that which allows access to an indefinite number of people and relieves government of part of its burden; and 3) the benevolent and charitable exemption and the open space program are not mutually exclusive and the fact that a land trust qualifies for the open space program does not mean that the trust is unqualified for the benevolent and charitable exemption (Francis Small Heritage Trust v. Limington).

A charitable institution looking for exemption must apply in writing, including proof of entitlement for each parcel, on or before April 1 in the year in which the exemption is first requested. The application is filed with the assessors of the municipality in which the property is located. If granted, the exemption continues until the assessors find that the institution is no longer qualified.

To properly and completely evaluate a charitable institution’s claim for exemption, the assessors should request the following documents: 1) a report for the corporation’s preceding fiscal year; 2) a copy of the property deed; 3) a copy of the by-laws; and 4) a description of how the various elements of the property are being used.

The critical elements of this exemption are as follows:

1. The entity must operate solely for charitable purposes. Generally, charitable organizations are those whose property or funds, in excess of ordinary expenses, are offered for the relief of the sick, poor, or the distressed. They often provide a service that the community might otherwise be required to provide. If property owned by a charitable organization is subject to conditions imposed by a former owner that hinder or, in any way, limit public use, then no exemption should be granted (Holbrook Island Sanctuary v. Brooksville). An entity organized as a church does not qualify for exemption under this section (Pentecostal Assembly of Bangor v. Maidlow). However, a religious organization may own property that is found to be exempt as charitable (Salvation Army v. Standish). The court has held that even property used in a fashion reasonably related to the principal purpose of a charitable institution can be exempt if its use is not profit-oriented (Maine Medical Center v. Lucci).

2. The entity's charitable organization must not be a cloak for making financial profits for the organization. The motive of a donor to a charitable institution is not relevant in determining exemption entitlement. Property that is rented primarily for non-exempt uses is taxable. If the principal use of the property is for its own charitable purposes, the occasional rental of property does not defeat the exemption.

3. The exemption applies only to property owned by the organization. Contingent rights of ownership created by financing arrangements or mortgages do not affect ownership (Christian Schools v. Rockport). An entity cannot claim exemption for real estate that it uses, but which is owned by a non-resident person or corporation (Nature Conservancy of the Pine Tree State v. Bristol).

4. The exemption applies only to property used solely by the organization for its own purposes (Lewiston v. Marcotte Congregate Housing). Ownership by a charitable institution is not enough to claim exemption. The property must be used and occupied solely for a charitable purpose. The use of the property must be established as of April 1 of the year for which exemption is first claimed. The court has held that a continuous benevolent use is not necessary, but that a dominant, seasonal use for its own purposes by a charitable organization may qualify for exemption. If the use of the entire property is for the organization's own purposes with only occasional and incidental use by others, the exemption is allowed. The exemption applies only to that part of a property used for its own purposes or used by another exempt organization. If part of the property is used for its own

purposes, and the balance is largely idle, though used incidentally for its own purposes and is held for future use, the entire property is exempt. If, however, the balance of the property is not used at all, that portion is not exempt (Osteopathic Hospital of Maine v. Portland).

5. The officers and employees of the organization cannot receive any profit from the operation of the organization, other than reasonable compensation for services connected with furthering the organization's purposes. All profits derived from the use or sale of the exempt property must be devoted to the organizational purposes (36 M.R.S. § 652(1)(C)(2)(3)).

Residential care facilities. Nonprofit nursing homes licensed by the Department of Health and Human Services (DHHS) under 22 MR.S. chapter 405, nonprofit residential care facilities licensed by DHHS under 22 M.R.S. chapter 1663, nonprofit community mental health service facilities licensed by DHHS under 34-B chapter 3, and nonprofit childcare centers.

Nonprofit hospital or medical service organizations (24 M.R.S. § 2311). Nonprofit hospital or medical service organizations that operate nonprofit hospital service plans and are subject to the provisions of 24 M.R.S. Chapter 19 are declared to be benevolent and charitable institutions and their property is exempt from taxation.

Federally subsidized housing (36 M.R.S. § 652(1)(C)(6))**.** An owner of federally subsidized residential rental housing otherwise eligible for an exemption as a charitable institution or a literary and scientific institution may, in certain circumstances, be limited to an exemption of 50% of just value.

Hospital service corporations (36 M.R.S. § 652(1)(K)). The personal property leased by or used solely for its own purposes by an incorporated, nonprofit, benevolent and charitable organization exempt under IRC section 501, whose primary purpose is to operate a hospital licensed by the Department of Health and Human Services, health maintenance organization, or blood bank is exempt.

Literary and scientific institutions (36 M.R.S. 652(1)(B)). The real estate and personal property owned and occupied or used solely for their own purposes by literary and scientific institutions is exempt from taxation. Schools, universities, and similar institutions have traditionally qualified as literary institutions.

Property donated to an organization with certain rights retained by the donor does not qualify for exemption (Nature Conservancy of the Pine Tree State v. Bristol).

Teaching scientific courses, in and of itself, is insufficient to determine a scientific institution. The Law Court interpreted the term "scientific" to mean "devoted to the sciences generally or to some department of science as a principal object and not merely as an unimportant incident to its important objects." (Hurricane Island Outward Bound v. Vinalhaven). A wildlife sanctuary held in trust for a scientific institution is not itself a scientific institution (Holbrook Island Sanctuary v. Brooksville).

Greek college fraternities or sororities do not qualify for exemption as either fraternal organizations or literary and scientific organizations. However, the court has ruled that where fraternity buildings are: 1) Built by a college on campus property as an integral part of its housing system for a portion of its student body; 2) Are subject to complete control by it to the extent of ouster of the fraternities at its option; and 3) Are used by the college solely for the promotion of its own purposes; then such buildings are tax exempt as literary and scientific property, even if the buildings, with college permission, are occupied by fraternity corporations which may also use them incidentally for social and recreational purposes (Alpha Rho Zeta v. Waterville).

Agricultural fair associations (36 M.R.S. § 652(1)(C)(5)). Agricultural fair associations are generally eligible for property tax exemption. No exemption is allowable to an association that holds pari-mutuel racing meets unless it has qualified the next preceding year as a recipient of the Stipend Fund provided in 7 M.R.S. § 62.

Veterans' organizations (36 M.R.S. § 652(1)(E)). Real and personal property owned and occupied or used solely by posts of the American Legion, Veterans of Foreign Wars, American Veterans, Sons of Union Veterans of the Civil War, Disabled American Veterans, and Navy Clubs of the U.S.A. are exempt from taxation. Generally, the requirements described for benevolent and charitable organizations regarding use of property and proceeds, benefits to officers and employees, and financial reports apply.

Chambers of commerce and boards of trade (36 M.R.S. § 652(1)(F)). Property owned by chambers of commerce or boards of trade in Maine are exempt from property tax. The organization must file, upon request of the assessor, a report for the preceding fiscal year.

Religious societies and churches (36 M.R.S. § 652(1)(G)). Houses of religious worship, including vestries and the pews and furniture within them, and the land on which they stand, including enough for convenient access are exempt. A house of religious worship is an ordinary church edifice in which a religious organization conducts public worship. (Opinion of the Attorney General, March 21, 1989).

Property used by a religious society as a parsonage, up to the value of $20,000 (not adjusted by the certified ratio) is exempt, but any portion of a parsonage which is rented is subject to taxation. Personal property in a parsonage is exempt up to $6,000. A parsonage is the principal residence provided by the religious society for its clergy; it does not have to be in the same municipality as the church to qualify for exemption (Ferry Beach Park Assn. v. Saco).

Fraternal organizations (36 M.R.S. § 652(1)(H)). The real and personal property owned by fraternal organizations operating under the lodge system that is used for meetings, ceremonials, religious or moralistic instruction is exempt from property tax. The exemption includes all associated facilities. If only a portion of a building is used for these purposes, a partial exemption is applicable. The same conditions as set for the chambers of commerce regarding financial reports, use of profits and officer benefits apply. The exemption does not apply to college fraternities.

Leased property (36 M.R.S. § 652(1)(J)). If real or personal property of one of the exempt organizations in 36 M.R.S. § 652 is leased or used by another of those organizations solely for their own purposes, that property remains exempt.

Telecommunications property. Telecommunications personal property, used for the transmission of any interactive two-way communications including voice, image, data, and information, subject to the State excise tax under 36 M.R.S. § 457, is exempt from local property taxation. Exempt personal property includes any interest of a telecommunications business in poles.

Property of Individuals

Homestead exemption (36 M.R.S. §§ 681 – 689). Maine law exempts the first $25,000 of just value from the residences of Maine residents. A resident must apply for this exemption before April 1 of the year in which the owner first requests exemption. A resident must have owned a permanent residence for at least 12 months prior to first applying for an exemption.

The following definitions apply to this exemption.

1. Homestead. Homestead refers to any residential property in Maine assessed as real estate owned by, or held in a revocable living trust for the benefit of, the applicant, and occupied by that person as their permanent residence.

2. Permanent residence. A permanent residence is a place where an individual has a permanent home, to which the individual intends to return

whenever absent. An individual may have only one permanent residence at a time.

Veterans (36 M.R.S. § 653). Veterans are eligible for a partial exemption from property tax. A veteran is any person who served on active duty in the armed forces of the United States during any federally recognized war period. A qualified veteran, if discharged, retired, or separated from the armed forces, did so on other than dishonorable conditions. A qualified veteran includes certain family members, such as an unmarried widow/widower, a minor child, or a parent of a veteran.

Veterans (or qualified family members) claiming exemption must apply with proof of eligibility to the assessor prior to April 1 of the year in which the exemption is first claimed. The veteran must be a Maine resident. The exemption applies only to property in the town where the veteran lives. The residency of the veteran at the time of entering service is irrelevant (Lambert v. Wentworth). The application and proof of eligibility are confidential and cannot be made public.

A veteran may claim only one exemption under 36 M.R.S. § 653. However, if spouses are qualifying veterans, then each is entitled to an exemption on property that they own jointly.

Property transferred to a person for the express purpose of obtaining an exemption, except property transferred between spouses, is not exempt.

The property owned by a veteran, including real and personal property, together with the interest of a spouse in property held in joint tenancy, is exempt up to $6,000 of just value ($7,000 for veterans who served during a war period prior to World War II), provided: (1) the veteran is at least 62 years old, or (2) the veteran is receiving compensation from the United States Government for total disability, either service or non-service connected, as a veteran; i.e., a pension or disability payment from the Veterans Administration.

Paraplegic veterans. The estate of a veteran is exempt up to $50,000 of just value for a specially adapted housing unit, provided that the veteran is paraplegic, and has received a grant from the United States Government for specially adapted housing.

The exemption provided in this paragraph applies to the property of an unremarried widow or widower, minor child, or parent of a deceased veteran, including property held in a revocable living trust for the benefit of the unremarried widow or widower, minor child, or parent of a deceased veteran.

Parents of veterans. The property of a parent of a deceased veteran is exempt from taxation up to $6,000 of just value, provided he or she is: (1) Unremarried; (2) At least 62 years old; and (3) Receiving a pension or compensation from the federal government based on the service-connected death of the veteran child. Insurance benefits qualify as compensation from the federal government (Opinion of the Attorney General, May 18, 1973).

Widows and widowers of veterans. A veteran's widow or widower is exempt from taxation on their estate up to $6,000 of just valuation, provided: (1) he or she is unremarried; and (2) receiving compensation as a widow or widower of a veteran from the United States Government or the veteran would, if living, be entitled to an exemption.

The term "unremarried" when used to describe a parent or widow or widower of a veteran, means a person who is not a divorced spouse or a divorced parent of a veteran, and has not remarried after the death of the spouse. A widow or widower who marries subsequent to the veteran spouse's death loses their status as a veteran's widow or widower and does not regain that status even if the remarriage is terminated by death or divorce.

The court has stated that: ". . .[A] widow is a woman whose husband is dead and who has not remarried.... On the death of her second husband [she] became his widow, and did not revert to her former status as the widow of [her first husband]." (Solon v. Holway).

Therefore, even though a spouse of a deceased veteran who has remarried, but whose subsequent marriage has terminated, may receive federal benefits based on the first marriage, the spouse has surrendered their status as an unremarried widow or widower of their first spouse and under Maine law does not revert to unremarried widow/widower status on the termination of the subsequent marriage. This analysis does not necessarily apply to the situation where the subsequent marriage is terminated by annulment. In that case, the legal status of the parties involved and the effect on the applicability of the tax exemption is determined on a case by case basis (Opinion of the Attorney General, June 23, 1971). When a qualified veteran dies, leaving property, and is survived by a widow or widower and minor children, they are jointly entitled to only a single exemption.

An unremarried widow or widower of a paraplegic veteran who, if alive, would have qualified for the $50,000 exemption under 36 M.R.S. § 653(1)(D-1) is also entitled to that exemption upon written notification, furnishing proof of entitlement, to the assessor of the municipality where he or she resides.

<u>Minor children.</u> The estate of a minor child (less than 18 years old) of a deceased veteran is exempt from taxation up to $6,000 of just value.

Even though a widow or widower or minor child fails to apply by April 1, the assessor must make abatement if an application is filed within one year of commitment, provided the veteran died during the 12-month period preceding the April 1 for which the tax was committed (36 M.R.S. § 841(4)).

In determining the local assessed value of the exemption, the assessor must multiply the amount of the exemption by the certified ratio from the most recent municipal valuation return. If a municipality with a certified ratio of less than 100% applies the full value of an exemption, the exemption represents a larger percentage of assessed value than the same exemption in a similar municipality with a higher certified ratio. This violates the equal apportionment requirement in the Maine Constitution, article IX, section 8.

Property Tax Bulletin No. 7 provides guidelines for proof of entitlement to this class of exemptions.

Federally recognized war periods

- World War I: April 6, 1917 through November 11, 1918;
- World War I (Service in Russia): April 6, 1917 through April 1, 1920;
- World War II: December 7, 1941 through December 31, 1946;
- Korean Conflict: June 27, 1950 through January 31, 1955;
- Vietnam Era: February 28, 1961 to May 7, 1975;
- Vietnam Era: August 5, 1964 to May 7, 1975. For the period, February 28, 1961 through August 4, 1964, federal law restricts the definition of the Vietnam Era war period to relating only to veterans who served in the Republic of Vietnam; and
- Persian Gulf War: August 2, 1990 to a date that the U. S. Government recognizes as the end of the Persian Gulf War. This period also includes Operation Enduring Freedom, Operation Iraqi Freedom, and Operation New Dawn.

Other Recognized Service Periods:

- February 1, 1955 through August 4, 1964 (Maine property tax exemption applies to all veterans who served during February 1, 1955 through May 7, 1975, regardless of where they served);
- August 24, 1982 through July 31 1984; and
- December 20, 1989 through January 31, 1990.

Servicemen, nonresidents. The Servicemembers Civil Relief Act ("Act," 50 U.S.C. Appendix §§ 501-597b) provides that when a nonresident servicemember is present in Maine in compliance with military orders, that servicemember has a broad immunity from personal property tax, whether or not their home state taxes personal property. The Act defines the tax situs of personal property, including motor vehicles, but excludes personal property used in a trade or business, to be the state of the servicemember's domicile. This means that such servicemember's individually owned personal property is exempt from taxation. The U.S. Court of Appeals has further ruled that regardless of where a servicemember is stationed, their personal property wherever located can be taxed only by the state of domicile (U.S.A. v. Arlington County). The Act also exempts from tax a mobile home or house trailer that has not been permanently affixed to land, although it may be connected to water, sewer, and electrical facilities. For the purposes of the Act, mobile homes are considered personal property. (U.S.A. v. Chester County Board of Assessment).

Blind persons' estates (36 M.R.S. § 654). A qualified blind person is entitled to an exemption up to the just value of $4,000 against residential real estate. To qualify, a person must be a Maine resident who is legally blind as determined by a licensed Doctor of Medicine, Doctor of Osteopathy, or Doctor of Optometry. Property cannot be conveyed to a blind person merely to obtain an exemption. If a blind person has property in more than one jurisdiction, the exemption should be prorated in proportion to the taxable value in each jurisdiction.

Personal property. Individuals may be entitled to exemption for the personal property they own as provided under the heading Exempt Personal Property later in this chapter.

Other Miscellaneous Exemptions

Animal waste storage facility (36 M.R.S. § 656(1)(J)). The owner of an animal waste storage facility that obtains a certification from the Department of

Agriculture, Conservation and Forestry pursuant to 7 M.R.S. § 4204 is entitled to an exemption.

Urban renewal authority property (30-A M.R.S. § 5114(2)). The property of urban renewal authorities is public property used for essential public and governmental purposes and is exempt from property taxation. The exemption terminates when the authority sells, leases, or otherwise disposes of the property to a redeveloper.

Water corporations (36 M.R.S. § 656(1)(A)). The aqueducts, pipes, and conduits of any private corporation supplying a municipality with water are exempt when the municipality takes water without a charge for fire protection. The other property of water corporations is taxable.

Reservations (25 U.S. Code § 5108). Federal law prohibits Maine from applying property tax to allotted lands held in trust for a Native American tribe or members of a tribe by the federal government. Property that is owned in fee by tribe members or non-members within reservations, however, is taxable.

Minerals and mining property (36 M.R.S. § 656(1)(B)). Mines of naturally occurring metallic minerals are exempt for ten years after opening. Mining property, except for buildings and land (excluding the value of mineral rights) is subject to state excise tax in lieu of property tax (36 M.R.S. § 2854).

Privately owned airports (36 M.R.S. § 656(1)(C)). The landing area of a privately owned airport, the use of which is approved by the Department of Transportation, is exempt provided that the owner grants free use of the landing area to the public

Pollution Control Facilities (36 M.R.S. § 656(1)(E)). Air and water pollution control facilities certified by the Department of Environmental Protection are exempt. Exemption eligibility is fixed on April 1; therefore, certification by the Department of Environmental Protection after that date negates exemption status for that tax year (Connecticut Bank & Trust Co. v. Westbrook). The Department of Environmental Protection is required to issue a determination regarding certification by April 1 for pollution control facilities for which it received a completed application by December 15 of the preceding year. Water pollution control facilities must have a capacity to handle 4,000 gallons of waste per day. This exemption does not include facilities that store spent nuclear waste.

Renewable energy equipment (36 M.R.S. § 656(1)(K)). This program exempts renewable energy equipment, such as solar panels, from property tax beginning April 1, 2020. Taxpayers must apply for the credit by April 1 of the first year the exemption is requested.

Exempt Personal Property

Agricultural produce (36 M.R.S. § 655(1)(C)). Agricultural produce and forest products, including logs, pulpwood, wood chips, and lumber are exempt from taxation.

Beehives (36 M.R.S. § 655(1)(O)). All beehives are exempt from personal property taxation.

Business personal property (36 M.R.S. §§ 691 – 700-B). Certain personal property owned by a business is exempt from property tax under the Business Equipment Tax Exemption program (see Business Equipment Tax Exemption (BETE) Program in Chapter 7).

Camper trailers (36 M.R.S. § 1485). Camper trailers are exempt from personal property tax if the excise tax is paid prior to property tax commitment. If a camper trailer is subject to real estate tax and excise tax is paid prior to property tax commitment, a credit against the property tax is allowed for excise tax paid (see Property Tax Bulletin No. 6).

Farm machinery (36 M.R.S. § 655(1)(M)). Farm machinery used exclusively in production of hay and field crops, excluding motor vehicles, is exempt up to an aggregate value of $10,000 (see Property Tax Bulletin No. 17 – Exemption of Farm Machinery).

Furniture (36 M.R.S. § 655(1)(E)). Household furniture, including televisions, musical instruments, farming utensils, clothing, and mechanical tools, is exempt. Tools do not include heavy or complicated machinery.

Individually owned personal property (36 M.R.S. § 655(1)(P)). All items with a just value of less than $1,000 are exempt from property tax except for: 1) Items used for industrial or commercial purposes; and 2) Vehicles and camp trailers as defined in 36 M.R.S. § 1481 not subject to an excise tax.

Industrial inventories (36 M.R.S. § 655(1)(A)). Industrial inventories, including raw materials, goods in process, and finished products are exempt.

Intangibles (36 M.R.S. § 601). Intangibles such as stocks, bonds, certificates of deposit, and bank accounts are exempt from taxation. The definition of personal property is limited to tangible property.

Livestock (36 M.R.S. § 655(1)(D)). All farm animals are exempt.

Mining property (36 M.R.S. § 655(1)(S)). Mining property is subject to state excise tax in lieu of personal property tax.

Out-of-state property (36 M.R.S. § 655(1)(J)). Personal property located in and taxed in another state or country is exempt from tax in Maine.

Pollution control facilities (36 M.R.S. § 655(1)(N)). Personal property of pollution control facilities defined in 36 M.R.S. § 656(1)(E) is exempt.

Property in transit (36 M.R.S. § 655(1)(G)). Property in possession of a common carrier while in interstate transportation or held awaiting further transportation to the final destination is exempt.

Radium (36 M.R.S. § 655(1)(F)). All radium used in the practice of medicine is exempt from taxation.

Snowmobiles (36 M.R.S. § 655(1)(L)). Registered snowmobiles are exempt from taxation. Any non-registered snowmobile valued at $1,000 or more is subject to a personal property assessment.

Stock-in-trade (36 M.R.S. § 655(1)(B)). Stock-in-trade, including inventory held for resale by a distributor, wholesaler, retail merchant, or service establishment is exempt.

Trail-grooming equipment (36 M.R.S. § 655(1)(T)). Snow-grooming equipment registered under 12 M.R.S. § 13113 is exempt from property tax.

Vessels (36 M.R.S. §§ 655 (1)(H) and (I)). A vessel owned by a nonresident and being built or repaired in Maine is exempt. A pleasure vessel owned by a nonresident and being stored or repaired in Maine is exempt, unless the vessel was regularly kept in Maine during the prior year.

Renewable energy equipment (36 M.R.S. § 655(1)(U)). This program exempts renewable energy equipment, such as solar panels, from property tax beginning April 1, 2020. Taxpayers must apply for the credit by April 1 of the first year the exemption is requested.

Property Subject to Excise Tax in Lieu of Property Tax

Aircraft (36 M.R.S. § 1482). All aircraft are subject to an excise tax for the privilege of operating in the state, in lieu of a personal property tax. Aircraft owned on April 1 but on which the excise tax has not been paid prior to the commitment date is subject to personal property tax.

Boats and watercraft (36 M.R.S. §§ 1501 – 1506). Watercraft operated in Maine is subject to the watercraft excise tax under in lieu of personal property tax. Statutory exemption from the excise tax does not subject a watercraft to personal property taxation.

Mining (36 M.R.S. chapter 371). Mining property is subject to excise tax in lieu of property tax.

Motor vehicles (36 M.R.S. § 1483). All motor vehicles registered for use on the highways, including tractors, are subject to an excise tax in lieu of property tax. However, if the excise tax is not paid prior to commitment date for property taxes, then they are taxable as personal property (see Property Tax Bulletin No. 13 - Motor Vehicle Excise Tax & Personal Property Tax).

Railroad companies (36 M.R.S. §§ 561 and 2623). Railroad companies are subject to an annual state excise tax and are exempt from all local property taxation on land and fixtures inside the located rights-of-way. All buildings of railroad companies are taxable. Buildings leased from a railroad company are taxable to the lessee. The court has ruled that land within a right-of-way that was leased to another for construction of a filling station retained its exempt status (Portland Terminal Co. v. Hinds). Generally, the located right-of-way is restricted to a 66-foot-wide strip through towns. Located rights-of-way over which railroad service has been abandoned are taxable.

Telecommunications equipment (36 M.R.S. §§ 457 – 458). Qualified telecommunications equipment is subject to the state telecommunications excise tax in lieu of personal property tax.

CHAPTER 9

SUPPLEMENTAL ASSESSMENTS

Whenever assessors determine that taxable property has been omitted from an assessment or that an assessed tax is invalid or void because of some illegality, error, or irregularity in the assessment, then a supplemental assessment should be made and issued within three years from the last assessment date (36 M.R.S. § 713). The term "invalid" is defined in Black's Law Dictionary as not legally binding, while "void" means something that is of no legal effect.

Omitted property. A supplemental assessment for omitted property is appropriate only when the property has clearly not been previously assessed. Supplemental assessments cannot be used when assessors have misjudged the quantity, quality or value of the property assessed. Supplemental assessments cannot be used to correct an erroneous judgment of value (Dresden v. Bridge). A supplemental assessment for omitted property is justified if the assessor's description of the property originally taxed was specific enough as to the items assessed to clearly support proof of omission. If an original assessment described property as 500 acres of land and the assessor later discovers that the property contains 600 acres, the assessor may make a supplemental assessment for the omitted 100 acres. If, however, the property was originally described as forest land and the value of 500 acres was included, the later discovery of 100 additional acres cannot be subject to a supplemental assessment. The original description of the property as forest land is not specific enough to support a supplemental assessment.

In the case where property was omitted from the list of taxable property under the mistaken impression that it was exempt, but subsequently discovered to be taxable, the court has ruled that it could be included in a supplemental list (Athens v. Whittier).

Invalid or void tax. An invalid or void tax because of illegality, error, or irregularity in assessment can be corrected by supplementing the person who owned the property for the year in which it was erroneously taxed. A tax against poorly described or undescribed real estate is not void even though it could not be enforced by lien procedures. Such an assessment could be enforced by an action of debt and is characterized as imperfectly assessed; and supplemental assessments to correct imperfect assessment are not allowed.

A tax assessed against the real estate of "the estate of John Doe" is void since real estate of a deceased person, unlike personal property, cannot be taxed to the decedent's estate. A supplemental tax assessment against the personal representative of the deceased would correct the void assessment.

If the original assessment was made to the correct person, a supplemental assessment must be made to the same person. The supplemental assessment must be made to the owner as of April 1, and not, for example, to a guardian subsequently appointed (Sweetsir v. Chandler).

Omitted tax. A supplemental assessment may be made during the municipal budget year whenever assessors have inadvertently or erroneously omitted any tax to be raised by the municipality from their assessment or commitment. This would properly include the municipality's proportional share of county tax payable during that municipal year.

Responsible parties. In municipalities that are not part of a primary assessing area, the assessors currently in office may make a supplemental assessment even though they may not have participated in the original assessment. The assessors must use the same assessment techniques and principles for the supplemental assessment that were used in developing the original assessment, including that year's certified ratio. The tax rate applied to the supplemental assessment is the rate for the original tax year, not the rate for the year in which the assessment is issued.

In primary assessing areas, the chief assessor certifies the supplemental assessment to the municipal officers by a supplement to the valuation list. The municipal officers must assess the property according to the principles upon which the previous assessment was made.

A supplemental assessment is committed to the collector who is in office at the time of the assessment with a certificate stating that the original assessment was invalid or void or that the property was omitted, and that the powers in the previous warrant, naming the date of it, are extended to the supplemental list. The court has held that, where the select board/assessors sign a supplemental tax list as the select board rather than assessors, the error is correctable (Athens v. Whittier). However, where a supplemental list is not accompanied by any certificate that property was omitted from the original list by mistake, a warrant committing supplemental assessments signed by the assessors describing themselves as the select board is insufficient to prove the existence of such a list (Topsham v. Purinton).

Supplemental taxes are valid even though they may result in raising more money than is authorized by the 5% in excess of tax to be raised limitation (36 M.R.S. § 713).

Interest accrues on the unpaid balance of a supplemental tax beginning on the 60th day after the date of commitment of the supplemental tax, or the date interest accrues on delinquent taxes under the original commitment, whichever occurs later. The rate of interest is the same as is applicable to the current year's property tax.

If a lien is declared invalid after foreclosure and the former owner recovers the property, the assessors may make a supplemental assessment on the property and that owner for any year back to the year of foreclosure (36 M.R.S. § 713-A).

Collection. The powers in the original collector's warrant extend to the current collector for a supplemental assessment. Although the tax lien mortgage process can be used to enforce a supplemental assessment against real estate, this process cannot be used where the property has been sold and the transfer recorded between the date of the invalid assessment and the date of the supplemental assessment. In such a case, the lien is terminated (36 M.R.S. § 948).

The court has held that a taxpayer cannot argue for the recovery of tax paid because the assessor intentionally neglected to assess someone else's property (Greenville v. Blair). However, an individual taxpayer may petition the court to compel the assessor to assess omitted property in the town. In any event, values must be set by the assessors according to their judgment and it cannot be revised by a court order (Knight v. Thomas).

CHAPTER 10

ABATEMENTS

Fundamental Concepts

Abatement is the process by which assessed taxes that are determined to be excessive may be reduced, either in whole or in part. Abatements may be made because of errors in valuation by the assessor, because of overvaluation, inability to pay, or because they are simply uncollectible. Abatement requests must be properly classified to determine who has authority to decide the issue and under what condition. Although abatements are permitted by law, assessors do not have the authority to grant them arbitrarily. Tax assessments are always presumed to be valid and the burden of proving eligibility for abatement falls on the party filing the request.

Neither municipal officials nor attorneys retained to collect taxes by suit have authority to abate, settle, or compromise taxes, except in conformity with the law (Frankfort v. Waldo Lumber Co.). A municipality cannot vote to direct the assessors to grant specific abatements (Thorndike v. Camden). In fact, an Opinion of the Justices (1979, 402 A.2d 601) declared a proposed legislative resolve to authorize a town to abate certain property taxes unconstitutional. The underlying principle was that it was never within the bounds of legitimate legislation to enact a special law granting a privilege to one town in a particular case by overriding the operation and effect of general law, but leaving all other towns under its operation. Such an attempt violates the equal protection and special legislation clauses of the Maine Constitution (article IV, part third, section 13 and article I, section 6-A respectively).

The statutes that grant authority for abatements are stated in terms of the ordinarily permissive "may," but it is an accepted principle of statutory construction that when the word "may" is used in imposing a public duty upon public officials in the performance of their duty for the public good, and the public or some third party has an interest in the exercise of that power, then the word "may" is read "shall." The exercise of the power is viewed imperative as a matter of legislative intent. (Collins v. State).
Assessors, appellate boards, and the courts, when considering questions of over-valuation, are required by law to implement the general rule of equality and uniformity of taxation required by constitutional and statutory provisions.

Types of Abatements

Error in valuation. The only remedy available to a taxpayer who believes their property to be overvalued is an abatement request, in writing, to the assessor within 185 days from the commitment of the tax (36 M.R.S. § 841(1)). Failure to request abatement within this time precludes appeal procedures. In situations of a clear overvaluation, assessors should adjust the assessed value on their own initiative to eliminate the need for a taxpayer to apply for abatement. If a taxpayer has missed the 185-day deadline, the assessor may still adjust the assessed value, on their own initiative, within one year of commitment.

An error in valuation happens when, for example, an assessor does not account for the negative impact on value that an industrial property has on an adjacent residential property. This is distinguished from an error in assessment where, for example, an assessor includes property not owned by the taxpayer in that taxpayer's parcel.

An abatement request to correct an assessment because of exemption or mistaken ownership may properly be included in this category of overvaluation and is subject to an action for abatement.

While a successful abatement request may show overvaluation of a single property in relation to all or most other property in the municipality, showing a significant difference in assessed value between the subject property and a few nearby similar properties can prove overvaluation. In certain cases, a taxpayer may prove not that their property was overvalued, but that similar property was significantly undervalued, showing unjust discrimination in violation of the Maine Constitution, article IX, section 8. (Ram's Head Partners v. Cape Elizabeth).

An abatement based on overvaluation is the proper recourse for any legally assessed tax. The claimed overvaluation must be relative to the just value of other property in the municipality. The taxpayer has the burden of proving that the assessed value is manifestly wrong (Delta Chemicals v. Searsport), or that an unjust discrimination exists (Sears, Roebuck & Co. v. Presque Isle). The courts have said that the sales price is evidence of market value in determining property value for tax assessment purposes. Where average property around two lots was assessed at 108% of sale price, and the two lots were assessed at 147% and 128% of sales price respectively, the assessed value of those lots was "manifestly wrong." The court, however, does not have authority to assign value (Weekley v. Scarborough). In determining just value, the certified ratios published by the Property Tax Division are assumed to be correct, unless proved otherwise. In any proceeding related to a protested assessment, it is a sufficient defense of the assessment to show that it is accurate within reasonable limits of practicality, except when a proven deviation of 10% or more from the relevant assessment ratio exists (36 M.R.S. § 848-A). To enforce the concept of reasonable assessments, an assessor must decide whether it is advisable to abate small adjustments to value or to make those adjustments beginning with the next tax year.

Illegality, irregularity, or error. The assessor, within one year from commitment, or the municipal officers, between one and three years from commitment, may abate an assessment to correct any illegality, error, or irregularity in assessment (36 M.R.S. § 841(1)). If the assessor properly requested a list of property under 36 M.R.S. § 706-A, the taxpayer must have complied with this request or be barred from appeal. "Assessor" means the assessor or assessors in office at the time the abatement request is filed. An assessor cannot refuse an abatement on the grounds that there is no appropriation for abatements in the municipal budget.

Erroneous assessments that require abatement include situations where property was assessed to someone not taxable for it, where an assessment was void, or where a taxpayer entitled to exemption was assessed on the value of property subject to exemption. In situations of a clearly illegal assessment, assessors should, on their own initiative, correct assessments to eliminate the need for a taxpayer to engage in the appeal process.

The abatement process cannot be used to correct an imperfect but valid assessment. For example, if a person is assessed for land he or she does not own, then the assessment is illegal, the tax should be abated, and a supplemental tax assessed against the proper owner. However, if the tax assessed is not accompanied by a description of the land in the assessment record, then the tax, being valid, cannot be abated simply to issue a more perfect assessment.

Hardship or poverty. The municipal officers, or the State Tax Assessor for the unorganized territory may, on their own knowledge, or based on a written application after one year, but within three years from commitment, abate of property taxes on the primary residence assessed to a person who, for hardship or poverty, is unable to pay (36 M.R.S. § 841(2)). Municipal officers have an obligation to inform people unable to pay tax of their right to seek abatement and to assist the taxpayers with the abatement application. Hearings and proceedings to decide hardship or poverty abatements must be held in executive session, and materials submitted in support of the application, including the application itself, are confidential. The three-year period for abatements under this section may be extended by the municipal officers.

The statutes provide no guidance as to reasonable criteria to be used to evaluate a person's ability to pay. In Macaro v. Windham, the court reviewed a record which revealed that the plaintiff's monthly expenses, exclusive of real estate tax and repayment of a debt to her mother for paying off a bank mortgage on the taxed property, exceeded the taxpayer's monthly income during the years in question. Even though the plaintiff owned a valuable asset, her mobile home, the court found that in the absence of any ability to repay a loan, reliance on the existence of that asset to deny poverty abatement would defeat the purpose of this law. The purpose of the law is to prevent towns from forcing sale of a property to collect taxes from those otherwise unable to pay. In arriving at necessary expenses, the court considered mortgage payment on a modest mobile home, operating expenses of a vehicle, driveway snowplowing, car and homeowner insurance, and personal debts. If an applicant's poverty is undisputable, he or she is entitled to abatement. It is not inappropriate to delay an abatement request, with the approval of the applicant, if there is real possibility that the taxpayer's financial circumstances might significantly improve.

Inability to pay after two years. If, after two years from the date of assessment, a tax collector is satisfied that an assessed tax cannot be collected by reason of death, absence, poverty, insolvency, bankruptcy, or other inability of the person assessed to pay, the collector must notify the municipal officers in writing and under oath, stating the reasons why the tax cannot be collected. The municipal officers may, after due inquiry, abate the tax or any portion of it (36 M.R.S. § 841(3)). The purpose of this statute is to relieve the collector of the obligation to collect a tax that is uncollectible. Municipal officers should not confuse an uncollectible tax with negligent or ineffective collection efforts. In the latter case, the collector should be held to the statutory responsibility of collecting the tax. Taxes can be enforced by tax lien mortgages and collectors should make every effort to collect taxes due. Furthermore, the mere fact of death, absence, insolvency, or bankruptcy is not sufficient to abate a tax. Taxes may be recoverable in each of these situations through heirs, executors, court distributions for court-appointed administrators, or the subsequent location of a taxpayer.

Minor Amounts. Municipal officers may discharge a personal property tax that is minor or financially burdensome to collect (36 M.R.S. § 760-A (1))

Veteran's widowed spouse or minor child. Notwithstanding the failure to comply with 36 M.R.S. § 706-A, an assessor, on written application within one year from the date of commitment, may make abatement in the case of the unremarried widowed spouse or minor child of a veteran, if the spouse or child would be entitled to exemption under 36 M.R.S. § 653(1)(D), except for the failure to apply by April 1, so long as the veteran died during the 12-month period preceding the April 1 for which the tax was committed (36 M.R.S. § 841(4)).

Municipal discount. At any meeting when it votes to raise a tax, a municipality may, by vote, determine that all taxpayers who pay their taxes prior to a specified date are entitled to a discount of up to 10% (36 M.R.S. § 505(5)).

Abatement Procedures

Method of seeking abatement. Current statutes require that applications for abatement, initiated by a taxpayer, be timely submitted within 185 days from commitment in writing. Formerly, the court ruled that an application need not be in writing unless required by the assessor (Levant v. Penobscot County Commissioners). When applying for abatement of taxes, the burden of proof is on the applicant, requiring enough justification to make a reasonable request for relief (Shawmut Manufacturing Co. v. Benton).

The abatement process may be continued by a subsequent owner of assessed property. Where true and perfect lists were filed previously with the assessor and the subsequent owner of the property requested, but was denied, an abatement, the subsequent owner may pursue an appeal under authority of the prior owner. The Law Court has ruled that even though a purchaser was not the owner on the date established by the statute as the record date for the assessment, that fact should not be used as a device to limit the purchaser's ability to seek judicial review of the assessor's denial of an abatement request (Freeport Minerals Co. v. Bucksport).

If a taxpayer is given notice to furnish a true and perfect list of their taxable property plus exempt property subject to State reimbursement and the taxpayer fails to comply, then the taxpayer is barred of the right to apply for abatement, unless they furnish the list with the abatement application and satisfies the assessor that the taxpayer was unable to furnish the list at the appointed time (36 M.R.S. § 706-A). A person who files a true and perfect list of taxable and exempt property, but who refuses to answer all inquiries in relation to the nature and situation of their property, is barred from appeals of the decision of the assessors (Lambard v. Kennebec County Commissioners). If the assessor fails to give notice by mail, the taxpayer is not barred the right to seek abatement if, on demand, the taxpayer answers, in writing, all proper inquiries as to the nature, situation, and value of their taxable and exempt property (36 M.R.S. § 706-A).

The court has held that reasonable excuse or good cause does not satisfy the requirement of inability to furnish a list (see Inventory of Taxable Property in Powers and Duties, Chapter 3).

There is language in relevant Superior Court cases that, if an assessor denies an abatement requested by a taxpayer who has failed to provide a true and perfect list for reasons other than a failure to provide a list, the assessor is deemed to have waived the taxpayer's bar to appeal the decision.

Notification of decision. For hardship or poverty abatement requests, the municipal officers must provide the applicant with written notification within 30 days of application. The notification must include the specific reasons for the decision and must inform the applicant of the right to appeal and the procedure for requesting an appeal (36 M.R.S. §§ 841(2)(F) and (G)).

For other abatement requests, an assessor must give applicants written notice of the decision within ten days after final action. The notice must state that the applicant has 60 days from the date that the notice is received to appeal the decision and identify the board or agency designated by law to hear the appeal. If the assessor fails to give notice of decision within 60 days (or other agreed to deadline) from the filing of the application, the application is deemed to have been denied and the applicant may appeal to the next level (36 M.R.S. § 842).

Certification/records. Whenever an abatement is made, other than by the State Tax Assessor, the abating authority shall certify it, in writing, to the collector, who is thereby discharged from further obligation to collect the tax. When an abatement other than for hardship or poverty is made, the abating authority must issue a report within 30 days of the abatement and make it available to the public. The report must be made to the municipality at its annual meeting, or to the mayor and aldermen of cities by the first Monday in each March. The report must include the beneficiaries, the abatement amount, and the reason for abatement (36 M.R.S. § 841(5)).

A taxpayer who has been granted an abatement for taxes paid is entitled to interest on the amount of overpayment at the same rate that was established by the municipality for delinquent taxes, unless the municipality has set a rate in accordance with 36 M.R.S. § 506-A.

Foreclosure. A delinquent taxpayer is not entitled to a hearing before foreclosure of their title where he or she did not challenge the amount of the tax through the abatement process and where he or she retains other due process rights to protect their interest in the property (Auburn v. Mandarelli).

A municipality's title to property acquired under the tax lien mortgage statute is absolute. A town has no obligation to return property to a former owner.

CHAPTER 11

APPEALS

Legal Foundations

Introduction. Taxpayers are entitled to legal redress if their property has been overvalued for tax purposes. Through the abatement and appeal process, an assessment stands until the taxpayer can demonstrate that he or she is eligible for abatement (Penobscot Chemical Fibre Co. v. Bradley).

The mere fact that a property tax is high is not grounds for abatement. The fact that valuations in prior years were less than in the current year is not evidence of overvaluation (Penobscot Chemical Fibre Co. v. Bradley). Assessors may make adjustments to property values. Sporadic differences in values do not necessarily constitute discrimination and simple errors of judgment by assessors in and of themselves do not provide grounds for relief (Kittery Electric Light Co. v. Kittery).

The standards established by the courts for reviewing tax assessments indicate an evolution of thought, and a sequential summary of several of the more significant of these judicial findings is perhaps the most enlightening approach to understanding the predisposition of the court with respect to its role in matters of overvaluation and interpretation of just value requirements. Selected decisions follow.

1904 (Penobscot Chemical Fibre Co. v. Bradley). The assessor's valuation of other property in town and the value placed on the taxpayer's property in other years is inadmissible, but the value of similarly situated property as shown by actual sales and opinions of properly qualified witnesses is admissible on the question of true value.

1923 (Shawmut Manufacturing Co. v. Benton). If a taxpayer is taxed on the basis of just value while, by some scheme of the assessor, other similar property is assessed at less than its just value, then the taxpayer is entitled to relief.

1925 (Spear v. Bath). A taxpayer claiming to be overvalued need not prove fraud or intentional overvaluation, but he or she must prove that the valuation is manifestly wrong, and he or she must establish indisputably that he or she is aggrieved.

1926 (Cumberland County Power and Light Co. v. Hiram). A taxpayer whose property is taxed at 100% of its just value, while other property is taxed at less than 100%, is entitled to have their assessment reduced to the same percentage of value at which others are taxed, but a claim of discrimination must be supported by something which amounts to an intentional violation of the essential principle of practical uniformity.

1935 (Sweet v. Auburn). For tax valuation purposes, due consideration must be given to all uses to which property may be put by the owner, and its value is measured by what it would bring at fair public sale, when one party wishes to sell and another to buy. In a time of crisis, where the true worth of real estate by reference to the price the property would bring on the market is indeterminable, the reproduction cost with allowance for depreciation, purchase price, and capacity to earn money for its owner may be considered. Assessors should consider a fixed asset to be fairly constant in value and it should be gauged by conditions over a period of time.

1954 (Sears, Roebuck & Co. v. Presque Isle). The opinion and judgment of assessors controls the value of property for taxation purposes, unless it is so unreasonable under the circumstances that property is substantially overvalued and injustice results, or there is unjust discrimination, or the assessment was fraudulent, dishonest, or illegal. Neither the statute nor the constitution expects that a board of assessors could make an assessment with all values so exact that no expert could disagree with their judgment.

1966 (Kittery Electric Light Co. v. Kittery). Perfection is not expected, and if assessors have been honest with themselves, fair with the public, and true to their oath of office in their endeavor to reach just values, their judgment controls. Whenever it can be established indisputably by competent and sufficient evidence that an assessment against an aggrieved taxpayer's property is higher than assessments on the property of taxpayers in general, and that such discrimination was intentional, the court will reduce the tax to the extent necessary to place the overvalued property on a plane of equality with others in its class. To obtain relief under the constructive fraud doctrine, an aggrieved taxpayer must show more than a few instances of lower valuation being placed on other taxable property than was given to their property. A taxpayer must show that greater valuation was placed on their property than was put on the general mass of taxable property. Where it is impossible to secure the standards of true value, uniformity, and equality required by law, equality is most important.

1966 (Maine Consolidated Power Co. v. Farmington). The just value of utility property for tax purposes must be ascertained from consideration of all factors.

Assessors are not limited to the utility's earning capacity; other relevant considerations are to be weighed in arriving at just value.

1979 (<u>Farrelly v. Deer Isle</u>). The use of unfair or partial judgment, which results in the imposition of an unequal burden on property having the same just value, will invalidate an assessment. An assessment system that has a necessary potential for unequal apportionment of tax burden, producing arbitrary assessments, could not be sustained even if certain of the assessments approximated just value.

1981 (<u>Shawmut Inn v. Kennebunkport</u>). The just value of taxable property is the equivalent of market value. A recent public sale of property is evidence of market value for tax purposes, but the weight given to the sale price depends on the ability to show that it is indicative of the price a willing buyer would pay in a free and open market. An appraisal methodology was not inherently discriminatory where the recommended valuations of an appraisal firm, which valued a property on the basis of reproduction cost less depreciation, were checked against the assessor's independent knowledge of the town's property values and reductions in valuation were granted where the appraisal was found to be excessive. There is a presumption of good faith and conformity to the requirements of law attached to assessors' work, and to overcome such presumption a taxpayer must show that the judgment of the assessor as to the tax amount is irrational or so unreasonable considering the circumstances that the property is substantially overvalued and injustice results. Local assessors must keep themselves informed as to the methods used by the professionals they hire and assessors must use their own knowledge of local conditions to check on the accuracy of the professional appraiser's recommendations.

1989 (<u>Moser v. Phippsburg</u>). Assessors are not precluded from making adjustments designed to maintain equal distribution of the tax burden in the time period between town-wide revaluations. The mere potential for unequal apportionment of tax is not sufficient to overturn an assessment. The taxpayer must show that the assessor's system of valuation necessarily results in unequal apportionment unless they intend to prove directly that their property is substantially overvalued.

2014 (<u>Terfloth v. Scarborough</u>). While a sale price is not proof of fair market value, the town did not give the property sale price enough weight in determining assessed value.

Municipal Appeals

Municipalities may establish boards of assessment review. A board of assessment review is established by a town's legislative body at least 90 days before the annual meeting. A board is composed of three members and two alternates appointed by the municipal officers. Towns may, by ordinance, provide for a board of assessment review to be comprised of five to seven members and up to three alternates (30-A M.R.S. § 2526(6)(D)). A city may establish a board pursuant to 30-A M.R.S. § 2552(2).

Where a municipality has adopted a board of assessment review, a taxpayer may appeal a decision of the assessors or municipal officers to deny a requested abatement. A taxpayer may apply, in writing, to the local board of assessment review within 60 days after notice of the denial, or after the application for abatement is deemed to have been denied.

Either party may appeal from the decision of the board of assessment review directly to the Superior Court, in accordance with Rule 80B of the Maine Rules of Civil Procedure (Property Tax Bulletin No. 10 – Property Tax Abatement and Appeals Procedures). If the local board fails to give written notice of its decision within 60 days of the date the application is filed, unless the taxpayer agrees in writing to an extension, the application is deemed denied and the taxpayer may appeal to the Superior Court as if there had been a written denial.

Nonresidential property exceeding $1,000,000. Either party may appeal the decision of the local board of assessment review to the State Board of Property Tax Review or the county commissioners with regard to nonresidential property with an equalized municipal value of at least $1,000,000 (Cassidy Holdings, LLC v. Aroostook County Commissioners et al.). This appeal must be within 60 days after notice of the decision by the board of assessment review or after the application is deemed denied. The State Board of Property Tax Review reviews the appeal and may grant an abatement as it thinks proper (36 M.R.S. § 843(1-A)).

Primary assessing area appeals. If a primary assessing area has adopted a board of assessment review and the chief assessor or municipal officers deny a requested abatement, the taxpayer may apply, in writing, to the board of assessment review within 60 days after notification of the decision or after the application is deemed denied. If the board thinks the applicant is overassessed, the taxpayer is granted an abatement as the board thinks proper. (36 M.R.S. § 843(2)).

County Commissioner Appeals

Appeals from the decisions of assessors or municipal officers who deny an abatement request in a municipality that is not a primary assessing area, or that has not adopted a local board of assessment review may be taken to the county commissioners. A taxpayer may appeal to the county commissioners within 60 days after notice of the decision or deemed denial. Either party may appeal the decision of the county commissioners to Superior Court in accordance with Rule 80B. If the county commissioners fail to give written notice of their decision within 60 days of the date the appeal was filed, the appeal is deemed denied and the taxpayer may appeal to Superior Court as if there had been a written denial. (36 M.R.S. § 844(1)). A taxpayer may agree, in writing, to an extension of the time for a decision by the county commissioners.

The courts have held that the county commissioners, on appeal from a denial of abatement, must independently determine just value. In Quoddy Realty Corp. v. Eastport, the court stated that " . . .they ignored their responsibility to determine just value . .". The Law Court remanded this case for proper adjudication under its opinion.

An owner of nonresidential property with equalized municipal valuation of at least $1,000,000 may appeal to the State Board of Property Tax Review or the county commissioners (36 M.R.S. § 844(2)) (Cassidy Holdings, LLC v. Aroostook County Commissioners et al.).

It has been held that when county commissioners grant an abatement, but either had no jurisdiction because of a defective petition or granted relief to an applicant legally prevented from an appeal because of failure to answer the proper inquiries of the assessors, the court may require the commissioners' records to be submitted to the court for review (Levant v. Penobscot County Commissioners).

36 M.R.S. § 553 provides that real estate taxes may be assessed either to an owner or to a non-owner who is in possession of that property. The county commissioners must not refuse a petition for a hearing on a denied abatement request from a person who does not own the real estate, if that person is being taxed on that real estate. The person being taxed may be aggrieved by an incorrect assessment (Seaborne v. Look).

State Board of Property Tax Review

The State Board of Property Tax Review, as established by 5 M.R.S. § 12004(2), consists of 15 members appointed by the governor. The board has authority to hear and determine appeals from certain decisions of the local assessor, municipal officers, the local board of assessment review, or the county commissioners.

The board has jurisdiction over appeals from assessors' decisions on property in the Tree Growth Tax Law program, the Farm and Open Space Law program, and other programs. In primary assessing areas, the board serves as municipal officers in hearing appeals from the denial of abatement for hardship or poverty. The board is also authorized to decide municipal appeals of the Property Tax Division's equalized valuation or determination of assessing standards (36 M.R.S. § 271).

Court Appeals

A taxpayer who challenges a tax on the grounds that their property has been overvalued must first seek an abatement before appealing to a court. Taxpayers who claim that an assessment is unlawful may appeal the assessment directly to court without having first sought an abatement (Oakes v. Town of Richmond). Appeals from the decisions of local boards of assessment review, the State Board of Property Tax Review, or the county commissioners may be taken to the Superior Court with local jurisdiction. Appeals generally must be filed within 30 days after the notice of decision, or within 30 days after the application for abatement is deemed denied. The proper parties to an appeal to the courts are generally the municipality and the taxpayer. Tax assessors are improper parties in tax abatement proceedings and have no right to appeal the decisions of county commissioners to Superior Court (Sebago v. Drummond). However, where the abatement action involves entitlement to exemption, the assessors are retained as a necessary party to enable the court to order a granting of exemption, if justified, since only the assessors may grant an exemption (Connecticut Bank & Trust Co. v. Westbrook).

On initial appeal to a reviewing board, the assessors' decision as to the situs of property, its taxability and the assessed value is presumed to be correct until the contrary is shown. The taxpayer has the burden of proving their grievance. On appeal from the findings of the boards of assessment review or county commissioners, the court reviews only questions that these review agencies were authorized by statute to hear. The court does not become an independent tribunal, although it may properly make independent inquiry into the taxpayer's claims of overvaluation by considering the testimony of witnesses and the correlation of several approaches in arriving at just value (Harwood v. Southwest Harbor). The court may determine whether the review decision is unreasonable or unlawful, but it is generally limited to a consideration of questions of laws, and may not review questions of fact. On reviewing a tax abatement denial by county commissioners, for example, the court's role was to determine whether the negative conclusion was supported by substantial evidence on the record. The standard is whether the record contains such relevant evidence as a reasonable person might accept as adequate to support that conclusion (P. H. Chadbourne v. Bethel).

The court does not correct errors or inadvertencies with respect to valuation and it will not interfere with the opinion of assessors in determining value of property unless such errors or inadvertencies violate the uniformity of taxation requirement. The court will interfere with an assessment only where there is evidence of a systematic purpose on the part of the taxing board to cast a disproportionate share of the public burden on one taxpayer, or on a class of taxpayers (Sweet v. Auburn).

When the conclusions of assessors on property value are not honestly arrived at or produce an inequitable result, the court will intervene (Kittery Electric Light Co. v. Kittery). The authority of the court can be invoked when assessed value can be shown to be illegal, fraudulent, malicious, or determined in such an arbitrary and capricious manner, that it amounts to constructive fraud. Fraud in the assessment of property must be proved by sufficient evidence. The mere fact of overvaluation will not establish fraud and warrant judicial interference with the assessment. To justify a finding of fraud, there must be demonstrated a conscious failure on the part of the assessors to exercise the fair and impartial judgment which the law and their oath of office demands of them. A valuation that is so manifestly excessive as to indicate that the assessor could not have been honest in the property's valuation can be considered fraudulent. Likewise, any excessive valuation of property, knowingly and intentionally made by an assessor, in violation of the constitutional uniformity requirement (article IX, section 8), will be construed as constructive fraud subjecting the assessment to judicial review without proof of actual fraud.

CHAPTER 12

MISCELLANEOUS PROVISIONS

Special Assessments

A special assessment is a charge for a specific cost to a municipality caused by a taxpayer. A special assessment is added to a taxpayer's property tax bill and is treated as part of the tax. It is neither unjust nor inequitable to require that a landowner contribute towards the cost of a public project an amount equal to the increased value of their property (Auburn v. Paul).

Special assessments, if imposed, must be assessed on all similarly situated property and the assessment cannot exceed the private benefits received. Otherwise, the guarantees of due process and equal protection would be denied.

Damaged schoolbooks or appliances. If a public school student loses or destroys school property and the student's parent, after notification, does not reimburse the school for the lost or damaged property, the school board will report to the municipal assessors, who will include the value of the property in the next municipal tax assessed against the delinquent parent. The special assessment is collected as if it were a tax (20-A M.R.S. § 6807).

Nuisance assessments. When municipal officers are forced to remove or fix a dangerous building, the expenses incurred must be repaid within 30 days by the owner of the building or the assessors may assess the expense as a nuisance assessment against the land on which the building was located. This amount is included in the next annual warrant to the collector and is collected as if it were a tax against the real estate (17 M.R.S. § 2853).

The municipal officers may serve an order to the owner of property with a malfunctioning wastewater disposal system, including septic tanks, cesspools, cisterns, dry wells, sewer lines, and pipes to remedy the problem. If the nuisance is not remedied within 10 days, the municipal officers may correct the malfunction. The reasonable expenses of the municipality may be recovered through a civil action against the owner, or the amount shall be assessed against the land on which the wastewater disposal unit is located and it is included in the next annual warrant to the collector to be collected as a property tax (30-A M.R.S. § 3428). Interest, as determined by the municipality pursuant to 36 M.R.S. § 505, in the year in which the special tax is assessed, accrues on any unpaid balance on the 60th day after the commitment of the special tax to the collector.

Street improvement assessments. Reimbursement to owners of land taken by a municipality to create or alter a street may be recaptured from the lots adjacent to and bounded by the improved street through special assessments on those lots in proportion to the increased benefit or value.

The aggregate assessment cannot exceed the reimbursement for the land taken. These assessments are certified by the municipal officers and filed with the collector. If the assessment remains unpaid within 30 days of written notice, a special tax in the amount of the assessment may be imposed on the land and buildings and it is included in the next annual warrant to the collector and is collected as if it were a municipal property tax (23 M.R.S. §§ 3601 - 3607).

Sewer assessments. All assessments and charges authorized for sewer projects are certified by the municipal officers and filed with the tax collector for collection. If the assessment remains unpaid after 30 days from written notice, then a special tax in the amount of the assessment may be imposed against the person's land and it is included in the next annual warrant to the collector to be collected as a property tax. This assessment is authorized by a certification from the collector to the assessors (30-A M.R.S. § 3444).

Although the statutes are specific that special tax assessments are to be collected in the same manner as county and municipal taxes, the statutes are silent as to how these special taxes should be included in the tax collector's warrant. Maine Municipal Association suggests that special taxes be included after the overlay and before the total amount committed to the collector so that they will not interfere with the regular commitment. This application will ensure that the special tax is not used in computing the overlay, thereby avoiding jeopardizing the legality of the entire assessment by exceeding the limitations of the amount of overlay.

Municipal Development Districts

Municipal development assessments. The governing body of a municipality may designate development districts that will be dedicated to providing employment opportunities, broadening the tax base and generally improving the local economy. To meet the costs and financing obligations associated with this type of development, the municipality may issue development, maintenance and implementation assessments against lots or property within the development district (30-A M.R.S. § 5228).

<u>Tax increment financing district.</u> A tax increment financing (TIF) district is a type of development zone that uses some of the taxes generated from property within a designated area to finance pre-approved economic development projects.

During the application process for the TIF district, an assessor determines and certifies the value of all property within the proposed district as of the preceding March 31. This value is referred to as the original assessed value of the district. After the TIF district is approved, the assessor continues to assess and certify taxes on all non-exempt property in the district. The annual value of property in the district is referred to as the current assessed value.

Each year, a portion of property tax revenues generated from any increase in the the current assessed value above the original assessed value will be "captured." Captured revenues are deposited into a development program fund separate from the municipality's general fund. The municipality uses funds in the development program fund to finance certain approved projects. (30-A M.R.S. § 5227).

Tax Base Sharing

To provide an incentive for coordinated, multi-community economic development projects, 30-A M.R.S. § 5752 allows communities to share their tax bases. Municipalities may vote to enter into a tax base sharing agreement for all or a specific portion of the commercial, industrial, or residential assessed valuation located within their respective boundaries. The shared valuation is assessed in the municipality in which the property is located at the municipal tax rate. The collected taxes are remitted within 15 days to the other municipalities based on the terms of the agreement.

Property Tax Relief

Property tax has been the major source of revenue to local governments since colonial days. Because of the difficulties of locating and valuing all items of personal wealth in contemporary society, property tax has evolved from a general property tax to a limited property tax. The tax is now viewed as a less reliable measure of a person's ability to contribute to the costs of local government than it was during earlier agrarian-based society. Measures to address the burdens placed on property taxpayers generally fall into the following categories: 1) Sharing state revenue sources with municipalities; 2) Reducing local expenditures; 3) Expanding the local tax base and taxing authority; and 4) Providing targeted property tax relief on an individual basis.

State-municipal revenue sharing. This revenue sharing program is intended to stabilize the municipal property tax burden by sharing the broad-based taxes of state government. Each month, a portion of the State's sales and income tax revenue is distributed to municipalities according to a formula that measures the comparative tax burden of each municipality based on its population and its equalized full value tax rate (30-A M.R.S. § 5681).

Reimbursements for tax exemptions. Maine's Constitution, article IV, part third, section 23 requires reimbursement of at least 50% of the property tax revenue loss suffered by a municipality as a result of statutory property tax exemptions or credits enacted after April 1, 1978. Current law limits the state reimbursement to 50% of the revenue loss for the following exemptions created or expanded since 1978: a portion of veterans, veterans' organizations, renewable energy, and animal waste facilities. Business equipment exempt under the BETE program is also reimbursed at 50%, but a municipality may qualify for a greater percentage reimbursement if: 1) More than 5% of the municipal tax base consists of personal property; or 2) If BETE qualified equipment is in a TIF district created before April 1, 2008 and the municipality would have otherwise retained that part of the tax increment. Beginning tax year 2023, the homestead exemption is reimbursed at 76%. Claims for revenue loss must be filed by November 1 or within 30 days from the date of commitment, whichever occurs later, on the Municipal Valuation Return. This constitutionally required reimbursement in recognition of a loss of local base is due municipalities regardless of whether a municipality's assessors had assessed all property liable to taxation in the year preceding enactment of a new property tax exemption or credit.

If the property tax lost due to veteran exemptions exceeds 3% of a municipality's revenue, that municipality is entitled to a 90% reimbursement of the exemption revenue loss amount that exceeds 3% (36 M.R.S. §653(1)(H)).

Tree Growth Tax Law program reimbursement. The state reimburses municipalities for 90% of the tax revenue lost as a result of the current use valuations required by the Tree Growth Tax Law, as long as the municipality achieves the minimum assessment ratio (36 M.R.S. § 327), and files a timely municipal valuation return (36 M.R.S. § 383).

The total tax loss is measured using the difference between the tax that would have been assessed if the land was assessed using the regional or local undeveloped acreage values, whichever is less, and the tax actually assessed under Tree Growth. The difference is then reduced to reflect any additional State education funding received by the municipality and attributable to the reduced state valuation resulting from the Tree Growth values. The calculated differences for all affected municipalities in the State are totaled, and 90% of that total is then distributed to the individual municipalities in proportion to their respective property tax burdens. (36 M.R.S. § 578).

Service charges. Although the statutory framework for municipally-imposed service charges is in place, the only class of exempt property currently subject to this source of revenue is residential properties used to provide rental income, excluding parsonages and student housing (36 M.R.S. §508).

Municipal legislative bodies may elect those exempt institutions and organizations on which service charges are to be levied. The charges must be calculated according to the actual cost of providing municipal services to the exempt real estate and to the persons who use the property. Services include fire protection, police protection, road maintenance, traffic control, snow and ice removal, water and sewer service, sanitation service and any other services other than education and welfare. The municipality cannot be selective within a classification voted for service charges.

The service charge levied against an exempt institution or organization cannot exceed 2% of its annual gross revenue. Upon satisfactory proof of a claim for this limitation to apply, the municipal officers must abate the charge in excess of 2% of the gross annual revenue for the year immediately prior to the year for which the service charge was levied (36 M.R.S. § 508(2)).

The Attorney General has opined that service charges are not taxes and are therefore not subject to the uniform assessment and apportionment provisions of article IX, section 8 of the Maine Constitution if such charges are calculated and imposed in strict conformity with the statute. Unlike a tax, a service charge is an assessment of benefits since the charge reasonably reflects the value of the service or convenience furnished. However, certain guidelines must be adhered to. There must be a benefit received by the person paying the charge; the charge must be imposed on all similarly situated users; and the charge must reasonably reflect the value of the benefit.

Property Tax Fairness Credit. This program provides targeted property tax relief to Maine residents who meet certain income limitations and who own or rent a homestead. Application is made annually on the resident's Maine income tax return. (36 M.R.S. § 5219-II).

Municipal Property Tax Assistance. A municipality, by ordinance, may adopt a program to provide benefits to persons with homesteads in the municipality. The municipality may restrict the benefits to taxpayers 62 years old or older. If adopted, a program must offer a higher benefit to taxpayers with lower incomes compared to taxes assessed and must include renters as well as owners. A municipality may similarly by ordinance adopt a program to provide benefits up to $1,000 to persons with homesteads in the municipality in exchange for providing volunteer services to the municipality. (36 M.R.S. § 6232).

Municipal Property Tax Deferral for Senior Citizens. This program allows a municipality, through ordinance, to allow certain elderly taxpayers to defer property taxes on their primary residences. To qualify, a person must be at least 70 years old and must have lived in their home for at least ten years. Further, the household income may not exceed 300% of the federal poverty level. Taxes deferred under this program must be repaid if the taxpayer dies, moves, or if the home is no longer the taxpayer's primary residence. If the deferral is on a mobile home, deferred taxes must be repaid if the home is moved out of the state. (36 M.R.S. § 6271).

State Property Tax Deferral Program. The State Property Tax Deferral Program, not to be confused with the municipal program described in the previous paragraph, is a State-administered program that allows certain individuals to defer (postpone) payment of the property taxes on their homesteads until they pass away, move, or sell their property. During the period when the taxes are being deferred, the State reimburses the municipality for the deferred taxes. The deferred tax, plus interest, is then required to be repaid to the State by the individual or their estate when they pass away, move, sell the property, or move the property (if mobile or floating home) out of Maine. To be eligible for the program, applicants must be at least 65 years old or unable to work due to a disability and must meet certain income and asset limitations. (36 M.R.S. §§ 6250-6266).

Property Tax Relief Fund. A Property Tax Relief Fund is established to distribute unanticipated surplus revenues in the State's General Fund to municipalities experiencing population growth and increased infrastructure needs. The fund cannot exceed $25,000,000. Money is distributed annually to municipalities based on relative population. Funds may be expended for the following purposes: 1) Capital construction and improvements, land acquisition, capital equipment acquisitions or other nonrecurring purposes; 2) Purposes for which bonds have been previously authorized, but not yet issued, to limit indebtedness; and 3) For the local share of state, federal or privately financed capital construction and improvement projects (30-A M.R.S. § 5683).

Mandate reimbursement: Article IX, section 21 of the Maine Constitution requires the state to annually provide 90% of the funding when the state requires a municipality to expand or modify its activities and that requirement necessitates additional expenditures from local revenues. The Legislature may override the payment of a mandate upon the vote of 2/3 of all members elected to each House.

APPENDIX A

CASE CITATIONS

The following is an alphabetic listing of citations for judicial decisions referenced in the body of the text, as well others not referenced. Those citations noted with an asterisk are summarized following this listing. The synopses are provided to allow the reader to more fully appreciate the judiciary's role in interpreting the law.

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APPENDIX B

Case Summaries

Acheson v. Johnson, 86 A.2d 628 (Me. 1952). The plaintiff appealed a decision of the State Tax Assessor declining to abate a sales tax assessment for coal used for "domestic purposes" at his hotel. The assessor ruled that the statutory exemption for fuel used for domestic purposes applied only to fuel used to heat the living quarters of guests who occupy for four consecutive months or longer. Justice Fellows wrote that the fundamental rule of statutory construction is to ascertain and carry out the legislative intent. The language of the statute is "the vehicle best calculated to express the intention" but the court will "look at the object in view." The purpose of the legislature, if discernible from the statute, will prevail irrespective of any rule for strict construction against exemptions. The Legislature determines what property is taxed and what is free from tax. Words that have acquired judicial definition are construed in accordance therewith. The court went on to identify a broader judicial definition of "domestic purposes" than that adopted by the assessor and reiterated that an administrative officer has no more right to legislate than the courts. The court concluded that the exemption applied to all fuel used for heating rooms of guests as well as other portions of the hotel maintained for the use, comfort or convenience of its guests and employees.

Allen v. Archer, 49 Me. 346 (1860). At the 1858 town meeting, the voters agreed to redistrict the school districts without approval of the municipal officers or school committee. The Legislature validated the redistricting of the town in 1859. However, the notices calling for the meetings of the town in 1857 and 1858 were defective because the record did not show that they were posted in conspicuous places as required by statute. The defendants, who were elected assessors at the 1858 town meeting, were bound to show the legality of the meeting at which they were elected; otherwise, they hold no official position. Because the defendants failed to show they were legally elected, they failed to show that the tax assessed the plaintiff was one they were required by law to assess. The plaintiff's yoke of oxen was seized by the collector when he refused to pay the tax assessed by the defendants. Although the time of the taking was disputed, the court ruled that it was immaterial, if it was within the statute of limitations. Nor was it material whether the defendants took the oxen by their own hands, or by the hands of the collector, acting under their warrant. Justice Rice ruled in favor of the plaintiff. Persons acting as assessors of a town, without having been legally elected as such, are personally liable for the acts of the collector to whom they have issued a warrant for the collection of taxes assessed by them.

Alpha Rho Zeta v. Waterville, 477 A.2d 1131 (Me. 1984). The City of Waterville assessed tax on the property owned by fraternities at Colby College after many years of the property not being taxed. The plaintiff fraternities argued that taxing their property violated the U.S. and Maine Constitutions regarding equal treatment of similar entities. The fraternities argued that they were equal and similar to tax-exempt fraternal organizations in the community and entitled to an exemption under 36 M.R.S. § 652(1)(H), despite a specific denial of exemption under that paragraph. The plaintiffs further claimed entitlement to exemption as literary and scientific institutions under 36 M.R.S. § 652(1)(B), either as part of the college or as independent entities. The court held that the college fraternities were similar to other fraternities in the community in name only and did not qualify for exemption as fraternal organizations under 36 M.R.S. § 652(1)(H). The court also ruled that the fraternities, while closely related to the college, were not part of the college and not entitled to the exemption under 36 M.R.S. § 652(1)(B). Further, the fraternities were not independently qualified as literary and scientific institutions, even though some ancillary literary and scientific benefit may exist due to the fraternities' relationship with the college. The plaintiffs' argument that other states have interpreted exempt property of literary and scientific institutions to include college fraternities was not applicable to Maine and that Maine courts had previously determined that the two entities are separate under Maine law.

Athens v. Whittier, 118 A. 897 (Me. 1922). Assessors with the Town of Athens initially considered the property of a veteran to be exempt. Subsequently, the assessors discovered the property was subject to tax, so they issued a supplemental assessment. The taxpayer argued that: 1) Because the assessors, who were also the town selectmen, signed the supplemental assessment with "selectmen" printed after the names, rather than "assessors," the supplemental assessment was invalid; and 2) Because the taxpayer's property was included on the original list, a supplemental assessment was not allowed. The court ruled that the title "selectmen" rather than "assessors" was due to inadvertence and the assessment was valid. The court also held that, since the taxpayer's property was added to the original list as property not taxed, that was equivalent to the property not being assessed and, therefore, omitted from the original list, which allowed for a supplemental assessment.

Auburn v. Mandarelli, 320 A.2d 22 (Me. 1974). The City of Auburn foreclosed on defendant's property for nonpayment of tax due and placed a lien on the property, subsequently taking possession of the property after the statutory 18-month lien period passed. The taxpayer claimed that: 1) The city violated procedural due process by not delivering the lien notice through personal service; and 2) The city violated substantive due process by taking without just compensation and received unjust enrichment because the value of the property seized far exceeded the outstanding debt. The taxpayer asked that the city reimburse him for the excess of selling price over tax due. The court ruled in favor of the city. The court found that the delivery of a lien notice through certified mail is sufficient to satisfy the law. The court also found that there was no constitutional violation of due process and that the law did not require the city to make payment to a taxpayer for excess revenue from foreclosure sales.

Auburn v. Paul, 24 A. 817 (Me. 1892). The City of Auburn installed a sewer system and issued special assessments to affected taxpayers. The defendant argued that the special assessment was unconstitutional because it was in addition to taxes based on just value of his property and as such violated Article IX, § 8 of the Maine Constitution, which states *"All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof."* The court ruled that the special assessment was for a public utility which benefitted the taxpayer in particular and was apart from that enjoyed by the community. The court ruled that the assessment was legal and was not subject to the constitutional limitation under Article IX, § 8.

Augusta v. Allen, 438 A.2d. 472 (Me. 1981). The City of Augusta and defendants both claimed title to a tract of unimproved land in Augusta. Defendant first attacked the statutory validity of the 1957 lien certificate (and therefore foreclosure) because although the certificate form had a space for the date of payment demand, it was left blank. Chief Justice McKusick ruled however that the tax foreclosure statutes only required a certified statement that proper demand for payment be made. The printed form, with space for inclusion of the notice date did not dictate a contrary conclusion; it simply provided opportunity for more than was required by the statute.

The second claim of the defendant was that the assessment was invalid. It was contended that treatment of the land as a single parcel, even though divided by a public road, violated the statutory requirement for separate tax valuation for each parcel of real estate. The court decided that the use of separate lot numbers on its tax map to identify land on opposite sides of a public road did not establish for tax assessment purposes, existence of two parcels rather than a single parcel where the subject property was of the same character and usage and was a single unbroken contiguous land area, but for the public road. The property had a single owner who had originally acquired the whole tract, and later conveyed it, by single metes and bounds description. Tax assessors have a reasonable degree of discretion in determining where individual parcels exist, and if the assessors have acted reasonably in the discharge of their statutory responsibility to place a separate assessment on each parcel of real estate, the assessment will be upheld.

Augusta Water District v. Readfield, 349 A.2d 768 (Me. 1976). The taxpayer owned approximately 300 acres that included Carleton Pond, a water source for the municipality. The pond was fenced off and part of the parcel was in current use programs, but the municipality valued some of the land as developable lots. The taxpayer argued that the land, which was designated as a wildlife sanctuary by the municipality, should be included in the open space program. The court agreed with the taxpayer.

Baker v. Webber, 67 A. 144 (Me. 1907). Baker claimed title to real estate in Grand Lake Stream by virtue of a quitclaim deed by D. Hall who acquired his interest by and from the Plantation, and to whom the land was sold by the tax collector for the nonpayment of taxes by the previous owners. The defendants claimed that the proceedings for the assessment and collection of the tax and for the sale of the land were flawed. First, they contended that no person was legally elected for 1897 as collector of taxes, the year of the assessment. The town merely "voted that the collection of taxes be given to the lowest bidder if he gives the required bond, otherwise to be given to the next lowest bidder." Based on the record, however, the de facto collector was not the lowest bidder. There was no legal evidence therefore that the collector was properly elected and the collector's deed was determined to be a deed of a person assessing without right to act in that capacity. The taxpayer is entitled to have his interest protected in the sale of his property by the obligations imposed by the official oath. There was no record of the oath.

The transfer was also defective because there was no record of the assessment of the tax in question. There was no recorded list of assessments committed to the collector. When the forfeiture of land is sought for nonpayment of taxes, it must appear that there has been strict compliance with the essential provisions of the statute upon which the alleged tax title is founded. To prevent forfeiture, strict constructions are not unreasonable.

Baxter v. Waterville Sewerage District, 79 A.2d 585 (Me. 1951). The Legislature passed a bill enacting the Waterville Sewerage District to take responsibility of enhancing and maintaining the city's sewer. The plaintiff taxpayers argued that the bill was unconstitutional on the grounds that: 1) Allowing the district to borrow violated the city's debt limit; 2) The district boundaries were the same as the city's boundaries; 3) The bill absolved the city from its legal duty of administering a function of the city and transferred that duty to the district; 4) The district commissioners would be appointed by the mayor rather than elected by city residents; 5) City functions should be financed through taxes instead of fees for services; and 6) The fees to be charged by the district violated the vested contractual rights in the current public sewer that the plaintiffs had with the city. The court ruled that: 1) The district is not a scheme to circumvent the city's debt limit; 2) The district and the city could both occupy the same boundaries because the two entities were created for different purposes; 3) Transferring the sewer administrative duties to the district was within the Legislature's authority; 4) The appointment of district commissioners does not affect the constitutionality of the bill; 5) Allowing for district fees is within the authority of the Legislature; and 6)

The plaintiffs had no inflexible and absolute contract with the city for sewer services. The court ruled in favor of the defendant district.

Blaney v. Shapleigh, 455 A.2d 1381 (Me. 1983). The town foreclosed on the plaintiff's property for nonpayment of property tax. Plaintiff argued that the town did not provide adequate notice of property tax lien as required by 36 M.R.S. § 942. The court found that the town had not given notice to one of the owners of record and that lack of notice voided the tax lien.

Blue Sky West, LLC v. Me. Revenue Services, 2019 ME 137, 215 A.3d 812. Somerset County filed a FOAA request with Maine Revenue Services ("MRS") for information supplied by Blue Sky West, LLC to MRS in response to a 706-A request in its role as the assessor for the unorganized territory, where Blue Sky owned and operated a wind power project. Blue Sky filed suit to block the release of the information by MRS, arguing the information was proprietary and therefore confidential under 36 M.R.S. § 706-A. The court determined that, while the information requested, including project costs and pricing, was proprietary, the failure of Blue Sky to label the information as proprietary and confidential when it was provided to the assessor negated any confidentiality under section 706-A.

Boothbay v. Race, 68 Me. 351 (1878). The taxpayer argued that, since the town did not send him a notice requesting a list of property, the subsequent tax assessment was invalid. The court ruled that the lack of notice did not invalidate the tax. The law requiring the town send notice is merely a directory law and dos not, if neglected, void the tax.

Brewer Brick Co. v. Brewer, 62 Me. 62 (1873). The plaintiff appealed to recover taxes paid under protest. The taxes having been assessed in 1872 against the manufacturing plant located in Brewer. At the 1870 Annual Town Meeting, defendant municipality voted to ". . . exempt from taxation for a term of ten years, manufacturing . . . establishments hereafter erected in town . . . together with such machinery . . . used for operating the same." Such contracts derived authority from a series of legislative acts in the late 1860's that permitted municipal discretion in granting property tax exemptions within stated limitations. In his opinion, Chief Justice Appleton ruled that municipalities cannot constitutionally be authorized to raise by taxation any money to be given away. The expenses for which assessments are to be made must be public. There is no authority to assess for merely private purposes; as to give away, or to loan to individuals. The court further held that "[to] have uniformity of taxation, the imposition of, and the exemption from taxation, must be by one and the same authority - that of the legislature." Consequently, the legislation in question was found to be unconstitutional and the vote of the municipality to be void.

<u>Bristol v. Eldridge,</u> 392 A.2d 37 (Me. 1978). The Bristol assessors had granted an abatement to the defendants. But the defendants were dissatisfied with the amount and sought further abatement from the County Commissioners. The County Commissioners increased the abatement. The Bristol assessors attacked the decision of the County Commissioners in Superior Court arguing that Eldridge had not filed a list required by 36 M.R.S. § 706 (now § 706-A) and this precluded a County Commissioner-level appeal. They also argued that the Commissioners had acted arbitrarily and without basis in law. Superior Court found that by granting the initial abatement, the assessors had waived the list requirement and that the Commissioners were not barred from granting further abatement and held for the Eldridges. The Assessors then appealed under 36 MRSA § 844 to the Supreme Court, but Justice Wernick ruled that the Assessors were not a proper party to an action because it was the municipality which was the proper party. Assessors "are public officials whose duties and authority are fixed by statute; they are not agents of the municipality selecting them and for whose benefit they may make tax assessments, and they are not subject to its discretion of control." The appeals were dismissed.

<u>Bucksport v. Swazey,</u> 165 A. 164 (Me. 1933). The defendant was sued for 1931 taxes assessed upon his real estate and that of his deceased father. He argued that undervaluation of other taxable properties in town negated the tax. The defendant's real estate was listed for assessment in the record by parcels, each described generally as to character and location. The appraised value of each lot was recorded, but the tax was assessed on the aggregate valuation. The assessment against the deceased father was upon one parcel also listed by general description. This was not a case where the defendant's person or property is levied upon by direct warrant or where forfeiture could ensue, but was simply a proceeding for the collection of taxes by suit. In this form of action, it was not necessary that the assessment contain a description of the property, nor that separate valuations be made. The evidence of undervaluation of other properties was not admissible in this action. The defendant was liable for the tax, including the entire amount assessed against his father, since he was an heir of the estate and the assessors had not been notified of the division of real estate or of the names of other heirs or devisees. Because the record did not show a fixed date for the payment of the taxes or that interest should be collected thereafter, no interest was allowed.

<u>Bucksport v. Woodman,</u> 68 Me. 33 (1877). The taxpayer, as administrator of a deceased person's estate, was awarded an amount to be paid after April 1 and used to destroy two ships owned by the decedent. The town taxed this future amount as a debt due. The taxpayer argued that the award should not be taxed because of the nature of the payment and because the specific amount was unknown as of April 1. The court agreed with the taxpayer.

Camden v. Camden Village Corp., 1 A. 689 (Me. 1885). The Camden Village Corporation erected a building that was used by the local police and the corporation. When not used for municipal purposes, the large building rooms were rented for various entertainment activities. Money collected from the rentals was used to cover the operating expenses of the corporation. The Town of Camden claimed that the corporation's building was taxable, due to the rental activity. The corporation argued that it was an auxiliary of the government, the building was used for a public purpose and, therefore, was tax exempt. The court found in favor of the defendant corporation. The corporation was created by the Legislature as a public entity. The rental of unused space in the building was incidental to its primary use.

Canning v. State Dept. of Transportation, 347 A.2d 605 (Me. 1795). This case doesn't deal directly with property tax; however, it is important relative to statutory meaning and interpretation. The plaintiff was employed by the defendant. The plaintiff suffered an angina attack while shoveling at work and was temporarily hospitalized. The plaintiff was awarded workers' compensation for the time spent in the hospital. The plaintiff argues that he was permanently disabled by the incident and should receive ongoing compensation. The defendant argues that the hospitalization was a result of a preexisting condition, rather than an accident, and there should have been no compensation awarded. Prior to the incident, the Legislature had removed the phrase "by accident" from the section of workers' compensation law relating to qualification for hospital and rehabilitation payments, but the phrase remained in the section related to payment of compensation. The court interpreted the intent of the Legislature to be that the phrase "by accident" was to be removed everywhere in workers' compensation statute. The court also ruled that, after hospitalization, the plaintiff had been returned to the same condition as before the incident and, therefore was not permanently disabled by the work incident. The court rejected both arguments from plaintiff and defendant and ruled that the original compensation awarded was correct.

Cassidy Holdings, LLC v. Aroostook County Commissioners, et al., 2023 ME 69, 304 A.3d 259. Plaintiff Cassidy Holdings, LLC owned nonresidential property with an equalized municipal valuation of $1 million or greater and requested an abatement of taxes. Plaintiff was denied the abatement but appealed to defendant Aroostook County Commissioners. Defendant dismissed the claim on the grounds that the defendant did not have jurisdiction to hear the case under 36 MRS § 844(2). On appeal to the Law Court, the Court held that the defendant did possess jurisdiction to review abatement appeals for nonresidential properties valued over $1 million, because the term "may" in 36 MRS § 844(2) indicates that plaintiff could choose to appeal either to the State Board or to the County Commissioners.

Champion International Corp v. Bucksport, 667 A.2d 1376 (Me. 1995). Because the town did not request from Champion a true and perfect list of all its estates not by law exempt from taxation, the taxpayer's rights to seek abatement was not affected by its failure to answer all of the proffered inquiries in the assessor's request for information to assist him in a revaluation of the mill. Champion's challenge to the assessor's request for information preceded the taxpayer's request for abatement and, therefore the taxpayer was not barred of their right to make application for abatement.

Christian Schools v. Rockport, 489 A.2d 513 (Me. 1985). Christian Schools, Inc. (CSI) owned a 62-acre parcel of land in Rockport which, because of financial difficulties, did not open a school for academic year 1977. CSI remained a nonprofit Maine corporation and the property continued to be used to maintain records and transcripts of former students. The facilities were used by other schools with CSI's permission. The defendant, Rockport, argued that CSI had transferred such a significant usufructuary interest in the property to an insurance company under a financing agreement that the property lost its tax-exempt status; moreover, it was argued that the reduced activity rendered the exemption as a literary institution unavailable. The insurance company had a right of first refusal on the purchase of the property, an option to purchase and an equity interest in the land. The parties had stipulated that CSI was a benevolent and charitable organization.

Justice Roberts wrote that the insurance company's interest was only contingent rights rather than ownership rights since CSI retained the full rights to determine the terms of transfer of the property should it elect to sell. The court found no basis to distinguish this finance arrangement from a standard mortgage arrangement. Although educational activities had ceased, regular access to records and use of the facilities by other schools, not for profit oriented purposes, was a use consistent with the purpose of CSI and exemption cannot be solely denied on the basis of a school's inability to operate at full capacity. The land continued to be used for a tax-exempt purpose as long as any proceeds in excess of the cost of the financing were applied to the benevolent purposes of the institution.

Clark v. Gray, 113 Me. 446 (1915). The defendant tax collector sent the plaintiff taxpayer a notice of tax due. Twelve days later, the collector arrested the taxpayer for nonpayment of the tax, claiming that the notice sent earlier was a demand for payment. The defendant argues that the law allows arrest 12 days after final demand for payment if the tax is unpaid. The plaintiff argues that the demand notice must be made in person, rather than a mailed bill. The court ruled that, while an in-person notification may not be required, the notice that the collector did send was insufficient as a final demand and the subsequent arrest was illegal.

Collins v. State, 213 A.2d 835 (Me. 1965). This case doesn't deal directly with property tax, but it is important relative to statutory meaning and interpretation. The plaintiff argued that state officials were given discretionary power and indirectly elected to waive that power. The case pivots on the interpretation of the term "may." The court ruled that when the rights of the public depend on the exercise of power by a government official, the term "may" should be interpreted to mean "must."

Common Cause v. State of Maine, 455 A.2d 1 (Me. 1983). The defendants, State of Maine and Bath Iron Works ("BIW"), entered into an agreement where the state would contribute money to pay for developing a dry dock facility in Portland for BIW to use for ship repairs. Funding would be raised through a bond issue. The plaintiffs, Common Cause and others, argued that: 1) Public funds were being used for private, rather than public, purposes and this violated constitutional equal protection; 2) By issuing bonds, the state is lending the state's credit to a private company; and 3) The bond language was misleading. The court found, after extensive review of previous cases, that economic development is a public purpose. The court dismissed the claim of equal protection because the plaintiffs had no standing on the issue and took a position opposed to parties similar to BIW rather than in favor of them. The court stated that issuance of a bond does not constitute a loan of state credit. The court also ruled that the referendum language was not misleading. Decision in favor of the defendants.

Connecticut Bank & Trust Co. v. Westbrook, 477 A.2d 269 (Me. 1984). The plaintiff taxpayer applied for an exemption for a pollution control facility it owned, under 36 M.R.S. § 656(1)(E)(2). The application was filed prior to April 1, 1982. The DEP initially denied the exemption in May. The plaintiff requested reconsideration. On reconsideration, the DEP allowed the exemption in August, 1982. The plaintiff requested abatement of taxes assessed on the pollution control facility on April 1, 1982, based on the exemption approval by DEP. The court ruled that taxability is based on the status of property as of April 1 of the property tax year. Since the exemption was not approved until August, the status of the pollution control facility on April 1, 1982 was taxable property and it was not exempt for property tax year 1982. The exemption was determined to have occurred on the date of certification by the DEP, rather than the date of application by the plaintiff.

Credit Counseling Centers (CCCS) v. South Portland, 2003 ME 2, 814 A.2d 458. The plaintiff taxpayer claimed an exemption as a benevolent and charitable institution. The taxpayer provided credit counseling and debt management services for people with high debt loads. The taxpayer generated about 60% of its revenue through renegotiated payment schedules between clients and their debtors, for which the debtors paid a percentage of amounts collected to CCCS. The defendant municipality argued that this payment renegotiation represented a service primarily to the debtor agencies and disqualified CCCS from a benevolent and charitable tax exemption. The court ruled in favor of the defendant municipality, that the plaintiff's business was not conducted exclusively for benevolent and charitable purposes.

Cressey v. Parks, 75 Me. 387 (1883). The defendant tax collector for the Town of Glenburn seized hay from the plaintiff for nonpayment of taxes. The law said that property seized must be kept four days and then if the owner did not pay the tax due the property must be sold. The property was seized on Saturday, January 8 and sold on Friday, January 14. The plaintiff argued that the collector held the property too long and the sale should be disallowed. The defendant argued that the property was required to be held for four full days, not counting the day of seizure, the day of sale and Sunday, so the sale on the 14th was required by law. The court ruled that the day of seizure should not be counted, but Sunday must be counted and the sale should occur on the fourth day after seizure, the 12th. The court found that the defendant defaulted, or failed to take required action, and awarded damages to the plaintiff.

Cumberland County Power and Light Co. v. Hiram, 131 A. 594 (Me. 1926). The plaintiff taxpayer requested and abatement of taxes due to an overvaluation of their property. The property value was adjusted to just value and an abatement of associated taxes was granted. The plaintiff appealed the lower court decision, arguing that, although their land was now valued at 100% of fair market value, other property in the town was valued at 75% of market value. The court ruled that the valuation was reasonable and that there was no intent to differently value the plaintiff's property and other town property. In the absence of the intent to overvalue the plaintiff's property (or to undervalue all other property), the court ruled that a good faith effort on the part of the assessor must be presumed.

Davis v. Ellsworth, 281 A.2d 138 (Me. 1971). The City of Ellsworth sent 12 lien notices to the plaintiff taxpayer, describing the property only by map, lot, book and page. The taxpayer argued that this description was insufficient and the lien was, therefore, invalid. The court ruled that the property description on the one randomly selected notice met the requirement of 36 M.R.S. §§ 942 and 943. The notice description was specific enough to accurately describe the property and the lien was valid.

Dead River Co. v. Houlton, 103 A.2d 123 (Me. 1953). Plaintiff was a corporation residing in Bangor with a place of business in Houlton where it bought wood among other enterprises. The Houlton assessor was told by an officer of the plaintiff of certain personal property in Houlton consisting of pulpwood and ties. The plaintiff claimed this property to be in transit and therefore not taxable in Houlton. The taxpayer appealed the assessment on this property and argued that it was not the owner of the property. Justice Webber ruled that where one files a list or otherwise gives information to the assessor upon inquiry, at least in the absence of fraud, mistake or accident, the taxpayer is estopped to subsequently deny its ownership or such other facts as the assessor(s) relied upon in making their assessment. Here the taxpayer disclosed ownership with no qualifications and the assessors must have the right to rely and act upon the disclosure. Where should the personal property be fixed? The court reasoned that pulpwood was not manufactured lumber and was not "employed in trade" or used "in the mechanic arts" in connection with any "store, storehouse, shop, mill, wharf, landing place or shipyard" in Houlton and therefore should be taxed by Bangor, that being the taxpayer's residence. The railroad ties were viewed as manufactured lumber and not being in the possession of a transportation company and in transit; therefore, taxable in Houlton.

Delogu v. City of Portland, 2004 ME 18, 843 A.2d 33. The City of Portland enacted a program under which property owners whose homes were valued under a certain amount could receive tax relief on a portion of their assessed value. The court ruled that the program as enacted was unconstitutional and invalid because art. IX, § 9 of the Maine Constitution made clear that the control of taxation rested exclusively with the legislature and therefore barred an individual municipality, without legislative authorization, from creating exemptions or abatements that result in unequal apportionments or assessments of property tax.

Delogu v. State of Maine, 1998 ME 246, 720 A.2d 1153. Bath Iron Works was offered a tax increment financing ("TIF") incentive that included a credit enhancement agreement, where part of the tax collected through the TIF district was returned to the taxpayer. The plaintiff claimed that the incentive program was: 1) Unconstitutional because it violated Article IV, Part 3, Section 1, which requires use of public funds for a public purpose; 2) Unconstitutional because the credit enhancement agreement violates the equal assessment requirement under Article IX, Section 8; and 3) Illegal because the TIF statute does not allow for a credit enhancement agreement.

Regarding the first argument, the court stated that it can only rule on whether the stated goal is a public purpose and whether the expenditure in question is not an unreasonable method for achieving that purpose. The court cannot determine the wisdom of a policy. Using this guideline, the court determined that the incentive offered did not violate the Constitution.

As to the constitutionality of the credit enhancement agreement, the court noted that, while taxes must be assessed equally, there is no such requirement regarding the distribution of tax revenue collected. Since the incentive consisted of a refund of a portion of taxes collected rather than a reduced assessment, the court ruled that there was no violation of the Constitution.

On the statutory argument, the court ruled that the law does allow for a credit enhancement agreement, even if not specifically stated.

Delta Chemicals v. Searsport, 438 A.2d 483 (Me. 1981). The taxpayer appealed from an order of the Superior Court that affirmed a decision of a board of assessment review refusing to grant tax abatement. The plaintiff argued the method used by the assessors to value land had potential for unequal apportionment of the tax burden and that the 1979 assessed value of its land was in excess of just value. In 1970, Searsport contracted with an appraisal firm to appraise all land for tax assessment purposes. In 1975 these values were increased by 20% for all properties; in 1977 industrial properties were increased 80%, and in 1979 a 15% increase to all industrial property. For the 1977 and 1979 increases, the assessor took an average of all property sales in Searsport and applied the average to all industrial properties because there were no industrial property sales. Justice Violette wrote that local assessors are permitted considerable leeway in choosing a method to arrive at just value of property. The plaintiff had not sustained its burden of proof of proving that the method used had a potential for an unequal apportionment of tax burden and that its use resulted in an excess valuation. There was no evidence of unjust discrimination, or that the assessment was in some way fraudulent, dishonest or illegal. The court noted, however, that its decision was not indicative of approval of the method used and that the absence of industrial sales within the town does not relieve the assessor from employing professionally recognized methods in determining their just value.

Dillon v. Johnson, 322 A.2d 332 (Me. 1974). The plaintiff brought an action against the State Tax Assessor and the Town of Sumner to challenge constitutionality of the l0 year durational residency requirement by which the defendant had been denied a property tax exemption as an otherwise qualified veteran. (This requirement was subsequently found to be unconstitutional in the case of Lambert v. Wentworth.) Justice Archibald held that the plaintiff's failure to include the municipal assessors in the action deprived the Law Court of jurisdiction to reach the constitutional issue, and ruled in favor of the defendant.

The court noted that the municipal assessors have certain responsibilities which are unique and distinct from other elected officials; their duties are defined by statute and, in the performance of their official duties, they are not subject to the direction and control of the municipalities in which they function.

Dresden v. Bridge, 38 A. 545 (Me. 1897). Samuel Bridge an inhabitant of Dresden died November 6, 1893, testate. Edmund Bridge, the defendant, was named executor. In April 1894 the assessors judged the value of the Bridge estate at $8,800 and the tax was paid. No list for the Bridge estate was filed after notice had been given by the assessors. In November 1894, the assessors made a supplemental assessment upon personal property of $359,503.94 and committed to the collector, with a certificate that the estate was omitted from the April assessment by mistake. The tax was assessed to "Samuel J. Bridge, est. of." Justice Strout decided as follows on the two issues raised. First, that the assessors, knowing S. Bridge to be a man of large estate, had not omitted any item by mistake but had undervalued the gross amount of the estate and that their assessment was not authorized by law. The "omission" mentioned in the statute does not mean that an erroneous judgment of the value of an estate can be corrected by a supplemental assessment; and the assessors cannot afterwards increase their estimate of value of the property under the form of a supplemental assessment.

Secondly, the tax assessed to "Samuel J. Bridge, est. of" was not a legal assessment against the defendant. An executor is personally liable for a tax assessed against him, but the tax in this case cannot be viewed as assessed against the executor, rather to the estate of Samuel J. Bridge.

<u>Dresden v. Goud,</u> 75 Me. 298 (1883). This was an action to recover a tax assessed against the defendant for the year 1881. Counsel for the defendant argued that the assessment was invalid because the assessors for that year were not sworn as such. Plaintiff's counsel answered that the record showed they were sworn as selectmen and, since the statutes provide that selectmen may act as assessors (36 MRSA § 703), the gentlemen were officers de facto, and as such, their acts were binding on the defendant.

Justice Danforth found a failure of evidence to show that either of the individuals had been duly sworn as assessors and ruled for the defendant for the following reason: the statute requires that the tax be legally assessed, and the proper oath is a condition precedent to the authority of the assessors to assess. No oath, no competency; no competency, there can be no legal assessment.

<u>Eastler v. State Tax Assessor,</u> 499 A.2d 921 (Me. 1985). The plaintiff taxpayer challenged the Maine Forest Fire Suppression Act, arguing that the tax imposed on owners of more than 500 acres of land was a property tax rather than an excise tax. The tax was a flat per acre fee. The taxpayer argued that, because the tax was based on ownership of property and was not apportioned according to property value, the tax violated the Maine Constitution, Article IX, § 9. The State Tax Assessor argued that the tax was imposed on commercial forestry and, therefore, was an excise tax, not subject to the requirement of apportionment according to value. The court used a two-pronged test to determine whether the tax was a property tax or an excise tax.

First, the calculation of the tax was analyzed. Property taxes are normally determined by taking the total estimated budget and dividing that amount by the property value to determine the tax rate. The court determined that the tax in question resembled a property tax by first determining the estimated cost of fighting forest fires and then calculating the amount to be assessed to each land owner.

Second, the court looked at the subject of the tax. Property tax is assessed on the ownership of property, while excise tax is based on a use or a right other than ownership. The court found that the tax was assessed on the ownership of property and not on the act of commercial forestry. The court found in favor of the plaintiff taxpayer, calling the tax an unconstitutional property tax.

Egery v. Woodard, 56 Me. 45 (1868). The plaintiff introduced a deed to himself, signed by the defendant and dated March 20, 1865. The plaintiff proved through another source that the deed was delivered and acknowledged on April 25, 1865. The defendant argued that the deed was backdated to cover the question of taxes based on the April l tax year. Chief Justice Appleton ruled that a deed, though duly executed while under the dominion of the grantor, and before its delivery, transfers no title. It takes effect by and from its delivery, not from its date. The defendant's deed was first effective after the land conveyed became liable for taxes assessed or to be assessed for the then current year and he was liable for the tax.

Farrelly v. Deer Isle (1979) 407 A.2d 302. The defendant argued that the plaintiff was barred from a right to abatement of real estate taxes because of a failure to file lists of their estates. Notice to file a list was posted at four locations in Deer Isle in late March, published in the Deer Isle newspaper and in the 1975 Annual Town Report, prepared prior to the 1976 town meeting. Plaintiffs contended that this was not "reasonable notice to the taxpayer," all of whom except one, were nonresidents. Plaintiffs did file lists with their application for abatement. Justice Pomeroy ruled that the lower court's decision should stand since he could not find it "Clearly erroneous" as required by the courts' Rule 52 and that the plaintiff was not barred from seeking abatement.

On a second front, the defendant argued that the taxpayers had not carried their burden of proving that their property was assessed in excess of its just value or that the assessor's judgment was irrational. The record established that the primary basis of the assessments was a formula that was used to arrive at the "just value" of the property. The formula used was $10, $15 and $20 per foot for poor, fair and good shore frontage respectively. However, if the shore frontage was not known, the assessors valued property with shore frontage at $400 per acre. The Chairman of the Board of Assessors also conceded that the formula was not always used if other circumstances were known. The court found that this practice could and usually would result in different valuations of two pieces of property of the same size and location. An example of this variation was demonstrated with the plaintiff's property. The property had frontage of 430 feet. The assessor testified it was of $15-20 per front foot quality, yielding a maximum value of $8,600, yet the 65-acre property was valued at $400 per acre or $26,000 because the frontage was not known. The court found that the 1976 assessments were arrived at arbitrarily and could not be sustained. This is true even if one of the assessments in the case had approximated "just value." Where it is impossible to achieve both just value and uniformity and equality required by law, uniformity is to be preferred as the just and ultimate purpose of the law.

Ferry Beach Park Assn. v. Saco, 7 A.2d 428 (Me. 1939). The plaintiff appealed a lower court decision to uphold a tax assessment, claiming they were entitled to an exemption as a benevolent and charitable association. The defendant city argued that the plaintiff operated as a business rather than as a benevolent and charitable association. The defendant further argues that the plaintiff is, at best, a religious entity and eligible for only the limited exemptions offered those groups. The court ruled that the plaintiff operated as a benevolent and charitable association, was incorporated in Maine, and the property was occupied for the organization's own purposes. Meeting the legal requirements, the plaintiff qualified for exemption.

Fickett v. Hohlfeld, 390 A.2d 469 (Me. 1978). Plaintiff brought action to quiet title to land against Hohlfeld whose title derived from a tax deed from the town. Justice Godfrey held that the tax assessor had not acted contrary to law in treating an unimproved woodlot as one parcel even though the parcel consisted of separately described pieces. A minor inaccuracy in the boundary description did not flaw a sufficiently accurate description. Finally, he ruled that the valid tax lien certificates constituted prima facie evidence of regularity of all proceedings with reference to acquisition of title by tax lien mortgages and foreclosure and that in the absence of contrary evidence, the foreclosure requirements were satisfied. The purpose of the requirement for describing real estate on the assessment list is to allow landowner an opportunity to protest assessment on the parcel.

Finance Authority of Maine v. Caribou, 1997 ME 95, 694 A.2d 913. The Finance Authority of Maine ("FAME") purchased property in July. Taxes assessed on April 1 of that year were unpaid at the time of sale and the City of Caribou assessed the unpaid taxes to FAME and that organization argued that, because they were tax exempt, they did not owe taxes on the purchased property. The court ruled that the property became exempt in July, when FAME purchased it. Along with the property, FAME acquired the outstanding taxes that had been assessed prior to the date of exemption. The court ruled for the city and that the taxes must be paid, although, the property was exempt going forward.

Foxcroft v. Straw, 29 A. 950 (Me. 1893). The town of Foxcroft assessed tax on property owned by the defendant. The defendant appealed the assessment on the grounds that his property was not taxable, since the land on which the property sat was owned by a tax-exempt entity. The land, owned by a benevolent and charitable association, was permanently leased to the defendant. The defendant built a cottage on the leased land. The court ruled that the land under the cottage was not tax exempt because it was not occupied by the benevolent and charitable association for its own purposes. The defendant's property was, therefore, taxable.

Francis Small Heritage Trust v. Limington, 2014 ME 102, 98 A.3d 1012. The primary question in this case is whether a land trust qualifies as a benevolent and charitable institution for exemption purposes under 36 M.R.S. § 652(1)(A). The court found that: 1) conservation of natural resources is a declared goal of the state; 2) charitable activity is that which allows access to an indefinite number of people and relieves government of part of its burden; and 3) the benevolent and charitable exemption and the open space program are not mutually exclusive and the fact that a land trust qualifies for the open space program does not mean that the trust is unqualified for the benevolent and charitable exemption. Because conservation of natural resources is a burden embraced by the state, the plaintiff land trust qualifies for exemption under 36 M.R.S. § 652(1)(A).

Frank v. Skowhegan, 329 A.2d 167 (Me. 1974). The plaintiff alleged over assessment on the grounds that the assessed valuation of a shopping center was based on the cost approach rather than the income approach, citing that lower than expected income effectively reduced the market value of the property. The plaintiff also argued that the assessors merely rubber-stamped the value estimate of a hired appraiser. The appeal was denied. In the opinion, Justice Pomeroy cited the opinion in the case of Sweet v. Auburn which held that the true value of real estate should be viewed as fairly constant, and based upon measurably stable conditions over a period of time. Furthermore, considering the necessity for municipal economic stability, the court would not accept the implication that valuation of income producing property be annually determined by temporary fluctuations in the economy. On the latter point, the allegation that the assessors had abdicated their statutory duties was uncontroverted by the evidence that the assessors personally visited the property and all the assessors were present when the appraiser presented his report for their approval and thoroughly explained his valuations to the assessors.

Frankfort v. Waldo Lumber Co., 145 A. 241 (Me. 1929). The plaintiff town assessed tax on defendant taxpayer. The taxpayer, through a third party, issued a promissory note for the tax and the town agreed that the note constituted payment in full. Unable to collect the note amount, the town began collection action against the taxpayer. The taxpayer argued that the tax assessment was settled and the town could not pursue action against them. The court ruled that the town had no authority to accept a note in lieu of payment and, therefore, had no right to discharge the tax liability for the defendant. Judgment for the plaintiff town meant the taxpayer must pay the tax due.

Freeport Minerals Co. v. Bucksport, 437 A.2d 642 (Me. 1981). The defendant town assessed tax on the plaintiff business taxpayer based on the April 1 value of property. The taxpayer sold the business in May. The town sent the taxpayer a tax bill in July. The taxpayer requested an abatement of tax. The Board of Assessors denied the abatement and the new business owner then appealed the denial. The lower court dismissed the case because the taxpayer had not appealed within the allowable time. The taxpayer argued that the legal procedure had been followed. The Supreme Court ruled that the new business owner had a right to appeal as a proper party in this case. The court remanded the case to the Superior Court for a ruling on the abatement appeal based on this opinion.

Georgetown v. Reid, 171 A. 907 (Me. 1934). The defendant taxpayer argued that a tax assessment against him was illegal because the town: 1) insufficiently described the property; 2) the taxpayer was not the owner of all lots included in the assessment; and 3) the naming convention used on the tax bill was inaccurate. The court found that: 1) a description of the property was not necessary in this case; 2) the fact that the taxpayer may not own some of the lots assessed is an argument for over-valuation, not of illegal assessment as argued; and 3) the naming convention, which the taxpayer had himself previously instituted as municipal assessor, was legal. The court found for the town, requiring defendant to pay the tax.

Gilpatrick v. Saco, 57 Me. 277 (1869). The defendant municipality assessed tax on the plaintiff taxpayer's property, including an additional value added to the taxpayer list of property. The taxpayer filed suit to recover the tax on the additional property value. The court ruled the case was a nonsuit by the plaintiff, since the only legal procedure for disputing an overassesssment was to apply for an abatement with the municipality.

Gray v. Hutchins, 104 A.2d 423 (Me. 1954). Gray claimed title to a parcel of land by quitclaim deed from the Town of Orland by virtue of tax liens. The defendant claims title to the same land as residuary devisee under the will of Bennett. The defendant claims the taxes were improperly assessed to the Bennett heirs and that the liens were defective because they did not sufficiently describe the property by not mentioning the buildings thereon. Justice Fellows ruled that the title of a devisee dates from the date of a testator's death only after a will has been proved and allowed, and an assessment against decedent's heirs is valid when made prior to the proof and allowance of a will. On the second resume, the court ruled that although land must be valued separately from the buildings, reference to buildings is not demanded by the lien certificate statute. The defendant had therefore failed to meet her burden of proving better title than that of the plaintiff.

Greaves v. Houlton Water Co., 34 A.2d 693 (Me. 1943). The plaintiff, assessor for the Town of Hodgdon, assessed tax on the defendant for poles and transmission lines located in Hodgdon. The defendant claimed that it was part of the Town of Houlton and, therefore tax exempt as a public municipal corporation. The court ruled that, while the defendant was managed by the Town of Houlton, it was a separate entity and not part of the municipality. The defendant did operate as a municipal corporation within the borders of Houlton, but also operated as a private enterprise in the Town of Hodgdon. Based on the organization of the defendant (separate from the town) and the operation as a private enterprise in the neighboring Town of Hodgdon, the court ruled that the property of the defendant was taxable.

Greene v. Lunt, 58 Me. 518 (1870). The plaintiff, assessor for Peru, acquired several parcels from the defendant through liens for nonpayment of taxes. The defendant argued that the parcels were improperly seized. The court ruled that the description of some of the parcels on the town's liens was inadequate for identifying the parcels and, therefore, those liens were nullified. Other liens were deemed sufficient and upheld by the court. Failure to deposit and keep a copy of the valuation book, however, does not invalidate an assessment.

Greenville v. Blair, 72 A. 177 (Me. 1908). The defendant taxpayer argued that the town of Greenville illegally assessed taxes because: 1) The collector of taxes was not elected by ballot; 2) The written collection notice sent to the defendant by the town did not include the signatures of the selectmen; and 3) The town intentionally neglected to assess another resident. The court ruled that the method of selection of the collector does not affect the assessment validity nor the obligation of the taxpayer to pay it. Regarding the selectmen signatures, the court said that the defendant provided no evidence and, in the absence of proof to the contrary, the assumption of compliance on the part of the selectmen must be made. The court further ruled that the failure to assess tax on another resident does not negate the tax owed by the defendant. The court sided with the plaintiff town.

Harwood v. Southwest Harbor, 489 A.2d 507 (Me. 1985). The plaintiff taxpayer claimed that the town overassessed his property and, further, the lower court merely accepted the assessor's testimony rather than conduct an independent review. The court ruled that the plaintiff did not meet the burden of proof required to show an overvaluation by the municipal assessor. The court found that the lower court correctly addressed the issue and affirmed the lower court decision.

Hathaway v. Addison, 48 Me. 440 (1860). The plaintiff taxpayer was assessed taxes on personal property in 1855 and 1856. The plaintiff argued that he was not a resident of the Town of Addison in either of those years and the tax assessed should be considered illegal. The defendant town argued that the plaintiff is not entitled to the elimination of these taxes unless he proves that the town officials were properly appointed and that the taxes paid for 1855 were paid under duress. The court ruled that the town improperly assessed and, for 1855, collected the tax. Because the entire tax was illegally assessed and, therefore, void, plaintiff did not have to prove improper procedure relating to the installation of officers and whether the 1855 payment was made under duress. The court voided the taxes and ordered repayment to the plaintiff.

Hebron Academy v. Hebron, 2013 ME 15, 60 A.3d 774. The plaintiff applied for exemption as a literary and scientific institution under 36 M.R.S. § 652(1)(B). The defendant municipality denied the application because the plaintiff – a private high school – is not a college and because the plaintiff generated unrelated income from rental to nonexempt entities. The court reviewed legislative history and ruled that academies are intended to be included as literary institutions. The court also ruled that the rental activity, which generated approximately 1% of the plaintiff's operating budget, did not interfere with the plaintiff's purpose and was de minimis and incidental. The court ruled in favor of allowing an exemption.

Hobbs v. Clements, 32 Me. 67 (1850). The plaintiff purchased property sold by the City of Bangor for nonpayment of tax. The defendant claimed that the tax collector didn't give proper notice of the delinquent taxes. The defendant was a resident when the tax was assessed, but moved out of state in the year of assessment. The defendant paid tax, but not all of it. The collector posted locally a notice of sale and subsequently sold the property to the plaintiff. The court ruled in favor of the defendant, that the collector did not post sufficient notice, which should have included the amount of unpaid tax and the length of time the tax was due. Therefore, the sale was invalid.

Holbrook Island Sanctuary v. Brooksville, 214 A.2d 660 (Me. 1965). At issue was whether the plaintiff's real estate that was used as a wildlife sanctuary is exempt from taxation as a "charitable" organization. If the property was exempt, there was no necessity of filing a list or of paying tax, seeking abatement and then suing to recover. Chief justice Williamson rules as follows on several points:

1. The donor's motive to give the property to allegedly benevolent and charitable or scientific institutions was not material in determining whether the property was tax exempt.

2. A wildlife sanctuary, while benefiting wild animals, was not "charitable" within the tax exemption statute. There was no benefit to the community or public since purposes were not limited to prevention of cruelty to animals or

research or disease control, and particularly since the prohibition on deer hunting was contrary to state game management policy.

3. A corporation using property as a wildlife sanctuary is not a "scientific institution" within the tax statutes where its purpose was to establish a game preserve, even though the area was available for nature study, observation and photography, and there was a library on nature and conservation.

4. The concept of charitable trust could not be validly extended to a purpose which is contrary to public policy, although not forbidden by law, and control of wildlife rests with the State.

Howard v. Augusta, 74 Me. 79 (1882). Taxpayer sold personal property to the plaintiff. The property had an unpaid balance. The plaintiff paid the tax due, under protest, to be able to sell the property to a third party. The plaintiff's position is that the tax was assessed to the taxpayer, not the plaintiff and the amount paid should be refunded. The court ruled that the unpaid tax assessed to the taxpayer was on property in excess of that sold to the plaintiff and was, therefore, invalid to assign the balance due to the plaintiff. The court awarded the plaintiff the amount of the taxes he paid.

Howard D. Johnson Company v. King, 351 A.2d 524 (Me. 1976). The Maine Turnpike Authority (MTA) had fee simple ownership of land and buildings leased to Howard Johnson Co. (Ho-Jo) adjoining the turnpike in Kennebunk for the purpose of carrying on a restaurant business at both service areas at mile 24. Ho-Jo furnished a list of its property to the assessor, but did not include the leased real estate. A tax was assessed against Ho-Jo for the "real estate" at the lease site. The town's claim that failure to file a perfect list barred the taxpayer from appeal. Justice Wernick disagreed stating that such a consideration leads inevitable to the merits of the case of hand. The court agreed that, based on the record, the tax had been assessed against the fee simple interest in the real estate owned by the MTA (plaintiff had described the subject of the tax as "Real Estate, Map 37, Lot 5"). That the tax was assessed on the leasehold interest of Ho-Jo was characterized as an expedient afterthought. The court ruled that the legislative intent in creating the MTA, was that the umbrella against tax liability should also protect the MTA's private lessee as the user of the property for purposes of enabling legislation. The lessee's restaurant operation was for the benefit of the users of the limited access turnpike and therefore a public use as contemplated by the "equal taxation" constitutional provision that permits exemptions when the subject property is devoted to a public use. It was held that the tax exemption established for the MTA should extend to a private lessee of the MTA's real estate who makes public use of the property by virtue of P&SL 1941, chapter 69, section 9.

Hurricane Island Outward Bound v. Vinalhaven, 372 A.2d 1043 (Me. 1977). The plaintiff taxpayer operated a self-development operation for teenagers specializing in outdoor programs. The taxpayer applied for an exemption under 36 M.R.S. § 652(1)(B) for literary and scientific institutions. The defendant town denied the exemption, but a lower court overturned that decision and allowed an exemption. The defendant town appealed that decision. The plaintiff argued that it is an educational institution that teaches scientific courses and, therefore, eligible for an exemption as a scientific institution. The court found that an educational institution and a scientific institution are two separate types of entities and the fact that an educational institution teaches scientific courses, by itself, is insufficient to qualify the entity as a scientific institution. The court ruled in favor of the defendant town, disallowing an exemption for the plaintiff. Apart from the decision, the court hinted that an entity may have to engage in scientific research to qualify for an exemption under 36 M.R.S. § 652(1)(B). The court stated that exemptions are narrowly construed and tilted toward no exemption.

Johnson v. Dedham, 490 A.2d 1187 (Me. 1985). The defendant, Town of Dedham, claimed title to property owned by the plaintiff as a result of the plaintiff's inaction regarding a lien the town placed on the property. The defendant claimed that the town's claim was invalid because the lien was invalid. The court ruled that the lien placed on the plaintiff's property contained an inaccurate and insufficient description of the property. The court also found that the lien incorporated two separate, non-contiguous parcels. Because a lien must accurately describe a single parcel, the court ruled in favor of the plaintiff and the town's lien was invalid as was its claim to the plaintiff's property.

Johnson v. Goodridge, 15 Me. 29 (1838). The plaintiff, town treasurer, argued that the defendant, tax collector, was required to pay over taxes collected by the defendant. The defendant argued that, since the assessor had not signed the tax bills, taxes were never committed and the collector had no legal right to collect and pay over the taxes to the plaintiff. The court ruled that the errors in commitment did not affect the requirement for the collector to submit to the treasurer the money that was voluntarily paid by the taxpayers.

Kelley v. Jones, 86 A. 252 (Me. 1913). Plaintiff claimed ownership of a parcel that the defendant claimed was sold to his mother through a tax acquired sale. The plaintiff argued that the property described was not the property of the plaintiff (the property in question). The court agreed that the property described in the sale was not the property in this action and ruled in favor of the plaintiff. The court also found that assessing tax to the owner in possession of a life estate is proper.

Kittery Electric Light Co. v. Kittery, 219 A.2d 728 (Me. 1966). The plaintiff, a regulated utility company, requested an abatement due to overvaluation of its property by the defendant municipality. The plaintiff argued that the proper value of its property should be the net book cost, while the municipal assessors used the gross book value. To support their claim, the plaintiff showed that the value it determined was the value that the PUC used for rate-setting purposes. The plaintiff further argued that the market value should then be reduced to 30%, to align with the ratio to full value of other property in the municipality, rather than the 46.2% applied by the defendant. The Superior Court applied a ratio of 40% to bring the company's property, including land, to the level at which residential properties were assessed in relation to true value. Both parties appealed to the Supreme Court.

The court ruled that the reasonable value, as determined by the PUC for rate-setting purposes, is not synonymous with just value for assessing purposes. Therefore, the full value determined by the defendant was proper.

As to the issue of the appropriate ratio to full value, the court found that the 40% ratio determined by the lower court was adequate. In the written opinion, the court stated that sporadic differences in value do not determine an intent to overvalue property. Further, the plaintiff had not proved its argument of value, since the expert witness it provided gave an opinion that was based on the opinion of others, rather than on firsthand knowledge or established facts.

In the opinion, the court wrote more generally on assessment, stating that the goal of valuation is practical uniformity, since precise values are not reasonably attainable. Value is an estimate. It is more important for an assessor to attain equality of assessment, in relation to other property within a municipality, so that no one taxpayer bears a disproportionate share of taxes. The court will only intervene if there is an effective intent to put a greater share of tax on one taxpayer or one group of taxpayers.

Knight v. Thomas, 45 A. 499 (Me. 1900). The plaintiff taxpayers petitioned the court to instruct the defendant assessors of Topsham, though a writ of mandamus, to revalue certain property. The plaintiffs claimed that the assessors undervalued one business property and wrongfully exempted another property. The defendants argued that the plaintiffs, as individuals with no interest in the valuation and who were not accusing the defendants of neglect of duty, could not issue a writ of mandamus. The court ruled that: 1) the plaintiffs, as individuals who were directly affected by the valuation of property in their town, were eligible to petition under a writ of mandamus; but that 2) the writ was the wrong vehicle for reconsideration of value; and 3) would be ineffective if issued. The plaintiff's petition was denied. A writ of mandamus is an order to a lower court or to a government official to correct an action or inaction.

Lambard v. Kennebec County Commissioners, 53 Me. 505 (1866). The plaintiff had presented the assessors of Augusta with a true and perfect list of his taxable estate, as required, but the assessors assessed him for additional property. The plaintiff complained that he was entitled to an abatement from the assessors because of their illegal and overvaluation of his estate. The plaintiff refused to submit to an examination under oath requested by the assessors to verify his list filing and his abatement was denied. The defendant argued that this failure deprived the taxpayer of his right to appeal before the County Commissioner. Justice Walton ruled that a taxpayer's purported list is not to be taken as true unless he answers all proper inquiries in relation to the nature and situation of his property, and if required, subscribes and makes oath to the truth of his answers. The plaintiff had therefore deprived himself of the appeal to the County Commissioners by refusing to verify his list in the manner required by law.

Lambert v. Wentworth, 423 A.2d 527 (Me. 1980). Plaintiff challenged the constitutionality of a veteran's property tax exemption statute that made eligibility conditional upon:

A. having been a resident of this State at the time of his entry into service; or having been a resident of this State for at least 10 years prior to making the claim for exemption, and

B. that the person be a resident of this State.

The plaintiff, who only recently acquired residency status, and had not satisfied either of the conditions under (a), argued for exemption status. Retired Justice Dufresne ruled as follows on the several issues raised. First, he argued that the exemption preference based upon a 10-year residency requirement was flawed. This requirement places a direct and real impediment upon a veteran's right. It cannot be justified under the strict test of showing a compelling state interest to be achieved by this classification. Because the Equal Protection Clause does allow statutory distinctions, and so long as a classification does not turn on suspect criteria (such as durational residency requirements) it requires only a rational justification for the decision to classify. The requirement of residency at the time of entry into service was viewed a proper distinguishing factor upon which to base veterans' performances. The court further ruled that although both conditions were enacted together without a severability clause should one fail, that the overriding intent of the Legislature to relieve cities and towns from loss of the base suggested that the invalid portion of the statute is separable from and independent of the rest of the statute which is valid, because it undoubtedly would have been enacted on its own had the Legislature been aware of the flaw in the 10-year durational requirement. Judgment was for the defendants.

Levant v. Penobscot County Commissioners, 67 Me. 429 (1877). A taxpayer from Levant requested abatement of tax from the town. The town denied the request and the taxpayer appealed to the county commissioners for Penobscot County. The county commissioners approved the taxpayer's request and ordered the town to reimburse the taxpayer. The town appealed the decision to the Supreme Court. The town argued the abatement was erroneous because the taxpayer did not answer questions in writing and refused to answer some questions, and the taxpayer did not make a written appeal to the county. The court found that the taxpayer's appeal to the county commissioners should have been in writing, and that the taxpayer's refusal to answer some questions was improper. However, the county commissioners had generally not followed proper procedure. The court returned the case to the county commissioners, requiring them to, under oath, draft a written account of the questions asked of the taxpayer by the town and the taxpayer's answers to those questions. After that, the commissioners were to prepare their written decision, based on the questions and answers.

Lewis v. Robbins, 104 A.2d 838 (Me. 1954). While on parole for one crime, the plaintiff committed a second crime, which violated the terms of his parole and triggered the remainder of his prison sentence. Plaintiff argued that the remainder of the sentence for the first crime and the sentence for the second crime should run concurrently. This is the standard treatment for multiple sentences and is in law. This, argued the plaintiff, is the intent of the Legislature and the court cannot rule otherwise. The court found that it is true that the justices cannot interpret laws in a manner that is contrary to legislative intent. In this case, however, a specific statutory provision deals with crimes committed while on parole. This provision states that the second sentence begins after the first sentence has finished. Because this is a specific statute, application of consecutive sentencing in this case does not violate legislative intent.

Lewiston v. Marcotte Congregate Housing, Inc., 673 A.2d 209 (Me. 1996). City of Lewiston appealed to the Superior Court a decision of the Lewiston Board of Assessment Review which found that Marcotte's building was 82% exempt and 18%, used for doctors' offices and units rented at market rents, was taxable. Marcotte is a non-profit corporation and found to be benevolent and charitable. Its building in Lewiston was of five stories providing a congregate care housing facility, a kitchen and cafeteria facility serving, the Marcotte residents, the adjoining hospital and the public, various offices for doctors and storage spaces. In addition, there was a tunnel connecting Marcotte with the hospital. The Superior Court found that, because of the parts of the building which were leased to doctors and the cafeteria, and leased storage spaces, that the property was not "solely" used for its own purposes and therefore the entire building was not exempt under 36 MRSA 652(1)(A). The court found no justification in the law for the Board's pro-ration of the exemption.

Marcotte then appealed to the Supreme Court which, reviewing, de novo, the decision of the board, affirmed the finding of the Superior Court.

Lewiston v. Tri-State Rubbish, Inc., 671 A.2d 955 (Me. 1996). The City of Lewiston assessed tax on dumpsters owned by the defendant and rented to customers in the city. The defendant had no permanent place of business in Lewiston and the business was located in another municipality. The defendant claimed that the dumpsters, as personal property, were taxable to the defendant's principal place of business under 36 M.R.S. § 602, which says that personal property is taxed where the owner resides. The city argued that the dumpsters fell under the exception to § 602 in § 603(2)(C). This exception applies to "store fixtures, office furniture, furnishings, fixtures and equipment. The court ruled that the term "office" in § 603(2)(C) modified not only furniture, but also the subsequent terms "furnishings, fixtures and equipment." While the defendant's dumpsters were certainly equipment, they were not office equipment and that is what the exception in question applied to. The court ruled in favor of the defendant that the dumpsters were not taxable to Lewiston.

Libby v. Portland, 74 A. 805 (Me. 1909). The plaintiff, an individual, sustained an injury in a building owned by the defendant City of Portland. The plaintiff sued the city for damages. The city argued that it is not liable for injuries suffered by the plaintiff because municipalities are not liable for injuries occurring in a public building. The court explained that a municipality has two distinct operations, one corporate and the other governmental. Governmental operations are those that include the discharge of duties required by the Legislature for public purpose, such as the operation of a school. Corporate operations include the maintenance of real estate unrelated to public benefit, such as property acquired through lien for unpaid taxes. While governmental operations are protected from liability due to injury, municipal corporate operations are treated the same as private corporate operations. A municipality is liable for damages due to injury suffered in a building under the corporate operations. In this case, the court ruled that the property in question fell under the corporate function and the municipality is liable for damages.

Macaro v. Windham, 468 A.2d 604 (Me. 1983). The defendant, Town of Windham, appealed from an order of the Superior Court that reversed a decision of the State Board of Assessment Review to deny an abatement of the plaintiff's 1978 real estate taxes, finding that she was able to contribute to the public charge. At issue was whether the record contained such relevant evidence as a reasonable person might accept as adequate to support the conclusions that plaintiff failed to establish that she was unable to contribute to the public charges. The record showed that the plaintiff's monthly expenses, exclusive of real estate taxes and questionable $100/month payments to her mother for mortgage repayment, exceeded her monthly income during 1978 and 1979. Therefore, Justice Wathen wrote that the Board was compelled to conclude that the record demonstrated plaintiff's inability to contribute to the public charges. The board relied on her ownership of an unencumbered asset, her mobile home, as additional support for its conclusion. Although the plaintiff possessed a valuable asset, in the absence of any ability on her part to repay a loan, reliance on the existence of that asset to deny a poverty abatement would defeat the purpose of the abatement provision which is to prevent towns from forcing the sale of property to collect taxes from those otherwise unable to pay.

Machiasport v. Small, 77 Me. 109 (1885). Plaintiff Town accused the defendant tax collector for the town of collecting taxes that were not accounted for. The defendant argued that the town's delivery of the commitment book was flawed. The collector claimed that the warrant was signed by only two assessors instead of three, the tax year was not specified, the date of the town meeting was not included and the arrest authorization for nonpayment of tax ignored the 12-year statutory waiting period. The court ruled that both sides had unresolved problems and sent the case back to a lower court for trial and a decision.

Maine AFL-CIO Housing Development Corp. v. Madawaska, 523 A.2d 581 (Me. 1987). In 1979 the plaintiff became incorporated as a nonprofit, charitable corporation for the purpose of developing, constructing and managing federally subsidized housing for low income elderly or handicapped persons. HUD agreed to provide rent subsidies to all tenants for 20 years. Members of the AFL-CIO were part of the construction work force. Despite a town resolution to exempt the project from property tax in lieu of an annual service fee, the assessors assessed a tax and the corporation paid, but then sought abatement on the basis of exemption status. At issue was whether the corporation qualifies as a benevolent and charitable institution.

Justice Skolnick reasoned that even though the corporation acted only as a conduit to channel federal funds (none of its own funds were used) and even though the corporation derived benefit from the project due to the work of its union members, and even though the tenants could be evicted for nonpayment of their portion of the rent; the charitable purpose of the corporation was achieved and that any benefits derived by the corporation because of AFL-CIO union member employment was merely incidental to its primary charitable purpose. The corporation operated within the constraints of binding contracts and federal regulations that prohibited it from deriving profits from the project. The court construed the term benevolent to be synonymous with the word charitable.

Maine Consolidated Power Co. v. Farmington, 219 A.2d 748 (Me. 1966). The plaintiff appealed a decision of the assessors to deny an abatement of 1964 taxes.

The utility argued that the cost of their property when first devoted to public use, less depreciation should control the tax valuation process.

Justice Tapley decided that the just value of a utility for tax purposes must be ascertained from consideration of all factors. It is the opinion of tax assessors and their judgment that controls, unless they are so unreasonable in light of circumstances that the property is substantially overvalued an injustice results or there is an unjust discrimination or the assessment is in some way fraudulent, dishonest or illegal. The appeal was dismissed.

Maine Lumber Co. v. Mechanic Falls, 157 ME. 347 (Me. 1961). The issue was whether or not the county commissioners had jurisdiction to consider an appeal from the refusal of the assessors to make an abatement. The taxpayer had failed to file his list of property before the time set by the assessors. Neither the assessors nor the county commissioners had jurisdiction to hear an abatement appeal unless the taxpayer satisfied them that he was unable to furnish it at the appointed time. The reason given for not filing the list was that the plaintiff had provided an independent appraiser hired by the town with all the pertinent information with regard to his assets as the appraiser felt necessary. Thus, the plaintiff believed the written list would be unnecessary. Chief Justice Williamson, relying on precedents established by previous courts, ruled that the taxpayers "reasonable excuse" or "w" for failure to file the list did not meet the statutory standard of inability to furnish it as the time appointed. The county commissioners had no jurisdiction to hear the appeal.

Maine Medical Center v. Lucci, 317 A.2d 1 (Me. 1974). The plaintiff, a hospital, was a benevolent and charitable institution. The plaintiff, to comply with municipal parking requirements acquired a parking lot and constructed a parking garage for use by patients and employees. The hospital charged parking fees, but operated the facilities at a loss. The parking areas were not open to the public. The defendant, tax assessor for the City of Portland, claimed that the parking areas were not exempt under the benevolent and charitable institution exemption and assessed tax on that property. The plaintiff requested abatement, which the superior court awarded. The defendant appealed the superior court decision. The court noted it had previously ruled (Curtis v. Androscoggin Lodge (1904), 59 A. 518) that property generating occasional rent does not exclude that property from the benevolent and charitable exemption. The court ruled for the plaintiff that the property in question was exempt from tax.

Maine State Housing Authority v. Depositors Trust Co., 278 A.2d 699 (Me. 1971). The plaintiff, Maine State Housing Authority ("MSHA"), issued a bond anticipation note, which was to be purchased by the defendant bank. Fearing a constitutional conflict, the bank subsequently declined to purchase the note and four questions were put to the court.

1. Does the note issuance by MSHA constitute a valid and constitutional public purpose? The purpose of the note was to purchase mortgages for property to be used for low-income housing. The court ruled that providing safe, sanitary housing to low income people provides a health and welfare benefit to the public. The note issuance for purchase of the mortgages was deemed a valid and constitutional public purpose.

2. Does the issuance of bonds and notes by MSHA violate the constitutional restriction on state debt? The Maine Constitution prohibits the loaning of the state's credit by the Legislature to another entity. The act creating MSHA specifically states that debt issued by MSHA is the responsibility of MSHA and not the state. The court ruled that issuance of bonds and notes by MSHA does not violate the constitution.

3. Does the act creating MSHA incur a debt of the state and, therefore, violate the constitution by providing for the "Housing Reserve Fund"? The fund language includes a provision for the Legislature to make annual appropriations to maintain a minimum balance. The court found that the appropriation language did not constitute a loan of state credit or a debt of the state. The fund language did not violate the constitution; appropriation of money to the fund is the option of the Legislature and not a requirement.

4. Does the fund language regarding appropriation violate the constitution by binding future legislatures? The court ruled that the language was permissive and hopeful, not binding and, therefore, the language was constitutional.

McCarty v. Greenlawn Cemetery Assn., 185 A.2d 127 (Me. 1962). The plaintiff owned property in the Town of Swanville. The property taxes for 1957 were not paid, so the town placed two liens on the property, foreclosed and acquired the property. The town then sold the property to the defendant. The plaintiff filed a "complaint to remove a cloud upon title to real estate." The court ruled that the tax liens filed on the property were flawed. The description of the property was insufficient in that the amount of land was questionable and did not list land and buildings separately. Further, the property was described as a single parcel, but the valuation was for two separate parcels. Because of these flaws, the court ruled that the liens were invalid and the property belonged to the plaintiff.

Morris v. Goss, 147 Me. 89 (1951). The plaintiffs questioned the constitutionality of the Legislature enacting a statewide sales tax as emergency legislation. The plaintiffs argue that the preamble statement in the legislation that the revenue from a sales tax is required for the essential needs of state government is not a statement of fact but a statement of conclusion. The court ruled that the statement was adequate because taxes do fund the essential needs of government and the preamble statement is not the place to include the entire state budget to prove the necessity of the sales tax. The plaintiffs also argued that enacting a new tax as emergency legislation is not authorized by the Constitution. The court said that not only is this method allowed, but since it has happened nearly every legislative session, it is standard practice. The court must assume the Legislature acts in a constitutional manner, barring evidence to the contrary.

A more sweeping interpretation by the court is also in this opinion. The court determined the guidelines for future determinations regarding legislative action on emergency legislation, primarily the preamble statements. The court stated that they can rule on whether the Legislature has expressed a fact and whether that fact *can* constitute an emergency. They cannot review whether an expressed fact exists, nor whether a fact that *can* constitute an emergency *is* an emergency.

Moser v. Phippsburg, 553 A.2d 1249 (Me. 1989). In 1978 Phippsburg conducted a town wide revaluation and the assessors increased the valuation of all properties by 30% in 1982. Then in 1985 certain large-lot subdivisions close to the Kennebec River were identified by the assessors as having increased market value and they were increased by 50%. Additionally, certain unusual architecturally-designed structures designed to specific lots were increased. The plaintiff argued that singling out a specific area of town for a 50% increase was inherently discriminatory. The lower court found for the taxpayers since "a potential for creating unequal apportionment of the tax burden" existed. Justice Hornby wrote the unanimous decision upholding the assessors. He wrote that the court has consistently held that to overturn a real estate tax assessment, a taxpayer must show that the property was "substantially overvalued," or that there was "unjust discrimination" in the apportionment of the tax burden, or that the assessment was "fraudulent, dishonest or illegal." However, in clarifying its decision in Farrelly v. Deer Isle, the court ruled that the potential for unequal apportionment is not enough. "Only if taxpayers can show that the assessor's system necessarily will result in unequal apportionment" do they not have to show that their property is substantially overvalued. Assessors are not precluded from making adjustments designed to maintain equal distribution of the tax burden in the time period between town-wide revaluations.

Mosher v. Robie, 11 Me. 135 (1834). Certain of the plaintiff's property was taken and sold by the tax collector to satisfy a tax assessed against the plaintiff in 1832. The parish had voted "to assess on the polls of the estates, $200 for Mr. Pomeroy's salary, $20 for taking care of the vestry, and $30 for the music," which, with an overlay of 5% amounted to $262.50. But the assessment was for $265.20 because the assessors had included $10 in their commitment to pay the tax collector pursuant to another vote "to allow the collector $10 for collecting the taxes."

Justice Parris delivered the opinion of the Court that the parish voters did not authorize the assessors to include the $10 in the assessment. The statute providing that assessors of towns and parishes would not be made responsible for the assessment of any tax which they by law required to assess; but the liability, if any, would rest solely with the town and that assessors would be responsible only for their own personal faithfulness and integrity did not protect the assessors in this case. They did not make an assessment required by law because they included in their assessment a sum not raised by vote of the parish and therefore exceeded the authorized overlay of 5%. It was not a faithful discharge of the assessors' duty to require the over collection. The purpose of this statute is to leave the assessors answerable for their own misdoings, and relieve them from all liability from the misdoings of others. The assessment, in its entirety, was illegal and void.

Murray v. Ryder, 115 A. 256 (Me. 1921). The defendant leased a portion of a parcel to the plaintiff. During the course of 20 years, the defendant paid the property tax assessed on the entire parcel. The defendant claimed the plaintiff owed 1/3 of the back taxes, while the plaintiff argued that he owed nothing, since the defendant made the tax payments voluntarily. The taxes were assessed to the plaintiff and the tax bills were sent to the defendant (plaintiff lived out-of-state). The court ruled in favor of the defendant and ordered the plaintiff to pay 1/3 of the tax. The court dismissed the plaintiffs claim of voluntary payment, saying that the defendant had no choice but to pay the tax or risk seizure of the property. Further, the lease agreement required that the defendant pay taxes only on the leased portion. The court treated this property the same as that owned by tenants-in-common, where each owner is responsible for their proportionate share of tax, even if one owner makes the entire payment.

Nason v. Ricker, 63 Me. 381 (1873). Both parties claimed title to real estate in the Town of Lyman. The plaintiff through a deed from the former owner, Cyrus Conant, and the defendant through a deed from the Lyman town treasurer who sold the property for nonpayment of taxes assessed against Conant. Justice Dickerson, finding for the plaintiff, ruled that the tax deed could not be upheld for three reasons. First, the assessment was made upon two separate lots in gross that deprived the owner of the right to redeem either lot separately. Secondly, the notice of the treasurer's sale did not contain an adequate description of the property to be sold; the law requires that the notice contain a description which identifies the land with reasonable certainty, whereas the notice contained only the owner's name, the number of acres, the valuation, and the tax amount. Thirdly, the evidence was insufficient to show that the sale was by public auction; the only reference to such sale was in the tax deed itself, and the party claiming title under such a deed bears the burden to prove by other evidence that the sale occurred at public auction.

Nature Conservancy of the Pine Tree State v. Bristol, 385 A.2d 39 (Me. 1978). The plaintiff nonprofit land conservation society requested a tax exemption as a literary and scientific institution under 36 M.R.S. § 652. The defendant town denied the request and the plaintiff appealed. The court ruled that the land held by the plaintiff was not "used solely for their own purposes," as required under § 652. The land consisted of five separate parcels. Each parcel was donated to the conservancy with certain rights retained by the donors. The retained rights consisted of rights of way to water, the right to maintain certain parts of the parcels, and custodianship. The court said:

> "Land held in its natural state does not become tax exempt by transfer to a charitable institution where the grantor retains the rights to access, passage or custodianship, more particularly since these tend to be the only private rights of ownership exercised while land is privately being held in its natural state."

Norridgewock v. Walker, 71 Me. 181 (1880). The defendant taxpayer argued that he did not owe property tax to the plaintiff Town of Norridgewock because: 1) He was not a resident of the town on April 1; and 2) The assessment was illegal, since the assessment list was not signed and recorded with the town clerk's office before the commitment date. On the first issue, the court ruled that the defendant's temporary absence from the town on April 1 did not constitute his being a nonresident, even though he had paid a poll tax to another town. On the second issue that, while it was true that the assessment list had not been signed and recorded before commitment, that "should not be regarded as fatal." The fact that two of the three assessors appeared in court sometime after commitment and signed the assessment list was significant in the court's decision in favor of the plaintiff town.

Oakes v. Town of Richmond, 2023 ME 65, 303 A.3d 650. Defendant town of Richmond assessed taxes against plaintiff Oakes on a property that plaintiff argued she did not own. Plaintiff challenged the assessments in Superior Court, alleging that she was deeded the property by an individual who did not have a legal right to it. The claim was dismissed in Superior Court on the grounds that plaintiff could not appeal the decision in court because she did not first seek an abatement. On appeal, the Law Court found that plaintiff was not barred from pursuing action in Superior Court when she had not first sought an abatement because she alleged that the assessment was unlawful.

Opinion of the Attorney General (April 10, 1978) 1978 Me. AG Lexis 139. This opinion is on the subject of poultry farming operations as they relate to the Farm and Open Space Law. The attorney general stated that, while poultry farming is not included in the definition of farmland (limited to cropland, orchard land, and pastureland), proceeds from those operations do count toward the income threshold for qualification in the Farm and Open Space Law program.

Opinion of the Attorney General (March 4, 1980) 80-58. The Attorney General determined that the residents of a town could not, at a town meeting, vote to refuse collection of that town's share of the school administrative district ("SAD") budget. The SAD budget is voted on at a district meeting and a town meeting vote cannot override the district budget.

Opinion of the Attorney General (February 16, 1982) 82-11. The Attorney General determined that property owned by the American National Red Cross (Red Cross) is exempt from tax. Federal law exempts instrumentalities of the federal government from state taxation. The U.S. Supreme Court has ruled that the Red Cross is a tax-immune federal instrumentality. Therefore, the Red Cross is exempt from property tax.

Opinion of the Attorney General (March 21, 1989). A church-owned radio antenna and the land it sits on are not exempt. The taxpayer claimed that a radio station was an extension of its ministry and the exemption should be liberally interpreted. The attorney general stated that exemptions have traditionally been strictly construed by the courts. A house of worship is an ordinary church edifice in which a religious organization conducts public worship and not a radio station and its antenna.

Opinion of the Justices (April 10, 1945) 141 Me. 442. The court ruled that a bill submitted to the Legislature that proposed to eliminate the property tax on intangible property is constitutional. The Constitution allows the Legislature to tax different classes of property. The primary limitation to the power of taxation is that any tax imposed must be apportioned and assessed equally. The Constitution does not require the Legislature impose tax on all classes of property. Therefore, eliminating intangible property from taxation is constitutional.

Opinion of the Justices, 261 A.2d 53 (Me. 1970). Both bodies of the Legislature passed by 2/3 vote a resolve proposing a constitutional amendment to allow convening of the Legislature at such times as the Legislature deemed necessary. The measure was forwarded to the Governor who vetoed it. The House decided that this was an important question of law and a solemn occasion and essentially asked the court for an opinion as to the effect of the Governor's veto. Art. IV, Part Third, Section 2 of the Constitution provides, in part, Every bill or resolution, having the force of law, to which the concurrence of both Houses may be necessary . . . which shall have passed both Houses, shall be presented to the Governor, and if he approves it, he shall sign it; if not, he shall return it with his objections to the House . . . The Justices reasoned that a resolve proposing constitutional change is not a bill or resolve having the effect of law. In proposing a constitutional amendment, the Legislature is not exercising its power to make law, but simply acting as a special organ of government for the purpose of initiating a constitutional amendment. The Governor is not a proper party to this function and in this case his veto was void. The Legislature erred in forwarding the bill to the governor. A long-continued practice of the Legislature cannot have the effect of imposing duties upon the governor beyond those provided in the Constitution.

Opinion of the Justices, 402 A.2d 601 (Me. 1979). Legislative document L.D. 1432 would have authorized the Town of Kennebunk to abate certain property taxes for the years 1973 to 1977 assessed and collected by the town on the property of Folsom. This resolve would authorize an abatement that would not be authorized for any other taxpayers similarly situated. The opinion of Chief Justice Mullen, who had previously written on this issue, was stated as authority for the instant opinion. He wrote: "On principle then it can never be within the bounds of legitimate legislation, to enact a special law, or pass a resolve dispensing with the general law, in a particular case, and granting a privilege and indulgence to one man, by way of exemption from the operation and effect of such general law, leaving all other persons under its operation. Such a law is neither just nor reasonable in its consequences."

The assessors' property card indicated road frontage of 354 feet, but in 1979 the taxpayer discovered the error and it was corrected to 150 feet. The error resulted in excess valuation of $4,030 for tax years 1973 to 1978. The tax bills did not describe the property dimensions. The assessor granted abatement for 1978, but denied further abatement and agreed that the error in the town's records had resulted in overvaluation. The opinion, relying on Chief Justice Mullen's analysis, concluded that such a resolve violated the special legislation and equal protection clauses of the Maine Constitution.

Orneville v. Palmer, 10 A. 451 (Me. 1887). The town assessors were sworn in to office by a person who was not authorized to administer oaths. The court determined that, since the oaths were administered by someone who was not authorized to do so, the tax assessed against the defendant was illegal.

Osteopathic Hospital of Maine v. Portland, 26 A.2d 641 (Me. 1942). The plaintiff hospital was tax exempt as a benevolent and charitable institution. The plaintiff purchased additional land for a planned expansion. The defendant City of Portland assessed taxes on the additional land. The plaintiff requested abatement, claiming the purchased land was also exempt as part of the benevolent and charitable institution. The defendant argued that the additional land was not in actual use for the purposes of the hospital on April 1 and that future plans do not affect the current tax status. The defendant, as proof, pointed to the exemption for religious houses of worship, where only enough land for ingress and egress is exempt. The court dismissed the house of worship comparison, since it falls under a different section of law. The benevolent and charitable exemption language is more inclusive than that for houses of worship. The plaintiff's additional land, although not in actual use by the hospital on April 1, was not used for any purpose that would prevent an exemption. Actual use on April 1 is not an appropriate measure for determining exemption under this statute. Prior court decisions stated that property of summer camps falling under the benevolent and charitable definition were not unqualified for exemption because the camps were closed for the season and not in operation on April 1. Further, the land was intended to be used for the plaintiff's expansion and was not held as investment property. The court found in favor of the plaintiff.

Otisfield v. Scribner, 151 A. 670 (Me. 1930). Both parties agreed to report this case to the Court to adjudicate a dispute over the validity of property taxes for the years 1924, 1925, 1926 and 1927. Scribner et al were sued for unpaid taxes on real estate in Otisfield. When Otisfield held its Annual Town Meeting in 1924 and 1925, Mr. Stone was elected to serve as a member of the Otisfield Board of Assessors, even though he had neither completed his duties as Otisfield's tax collector nor made a final settlement with the Town, thereby violating the statutory prohibition against holding the office of assessor and tax collector simultaneously. Since a Board of Assessors acting de facto cannot levy a legal assessment, the plaintiff attempted to cure this defect by securing passage of an act which retroactively validated the 1924 and 1925 assessments (P&SL 1927, c. 49). Citing precedents in this and other states, Justice Barnes affirmed that "[a] void tax cannot be made valid by the legislature" and therefore, held that the plaintiff could not enforce collection of 1924 and 1925 property taxes. For 1926 and 1927 taxes, the tax sale method utilized by the collector was defective in its process. The court held in this instance that an imperfect procedure does not impair the validity of a legal assessment, finding, therefore, in favor of the plaintiff for the latter two years.

Owls Head v. Dodge, 121 A.2d 347 (Me. 1956). The plaintiff town made a supplemental assessment on the property of the defendant taxpayer. The defendant owned a municipal airport that was tax exempt for serving a public purpose and being open to the public. The property subject to the supplemental assessment consisted of buildings leased to private businesses. The defendant made three arguments.

1) The defendant argued that the supplemental assessment was invalid because it was the work of "an assessor, his wife and an attorney." The court ruled that, since all three assessors signed the supplemental assessment, it was valid regardless of who had done the actual work.

2) The defendant argued that the property subject to the supplemental assessment was exempt from tax as property included in the municipal airport. The court stated that not all property owned by an exempt entity is necessarily exempt; taxation is the rule and exemption is the exception. The buildings in question were leased to private companies and not open to the public. Further, the buildings were not operated for the public benefit. The court ruled that the property in question was taxable.

3) The defendant argued that the prior court's ruling was invalid because the judgment was not rendered between court terms, as agreed to by the parties. The defendant claimed that, since the decision was filed after business hours on November 1, the decision was rendered on November 2, the start of the court's next term. The court ruled that the prior court's decision was rendered properly.

P.H. Chadbourne v. Bethel, 452 A.2d 400 (Me. 1982). The plaintiff taxpayer applied for an abatement of taxes under the Chase law, which allows a lower assessment of 25 or more acres of forest land if the tax burden creates an incentive to stop harvesting that forest land. The court ruled that the taxpayer did not provide enough evidence to meet their burden of proof in this case and upheld the lower court's denial of the requested abatement.

Patterson v. Creighton, 42 Me. 367 (1856). The defendant assessors included a prior year highway tax in the plaintiff taxpayer's assessment. The plaintiff did not pay the tax and the assessors seized some property of the plaintiff's. The plaintiff argued that the inclusion of the highway tax was invalid because the list of delinquent highway tax accounts given to the assessors was not signed by the surveyor, as required by law. The court ruled that the assessors erred in accepting the unsigned list, but the error did not rise to the level of holding the assessors personally liable. The court stated that assessors are "protected from liabilities for certain mistakes and errors of judgment, in the honest discharge of their official duties, when in the exercise of their jurisdictional powers." The court ruled in favor of the defendant assessors.

Pearson v. Canney, 64 Me. 188 (1874). The plaintiff, tax collector for Orneville, failed to collect and pay taxes to the defendant, treasurer for Orneville. The defendant issued an order to seize property of the plaintiff in payment for uncollected taxes, then sold that property. The plaintiff sued for wrongful taking of property. The court found that the collector was not given a warrant to collect taxes and did not receive an authorized list of taxes due. The list given to him was not signed by the assessors and, therefore, taxes were not legally committed. Because the taxes weren't legally committed, the collector was not responsible for the taxes, whether collected or not. The court ruled in favor of the plaintiff and ordered the defendant to pay him the amount of money received from the sale of the property seized.

Penobscot Chemical Fibre Co. v. Bradley, 59 A. 83 (Me. 1904). The plaintiff taxpayer argued that the defendant, Town of Bradley, overvalued the taxpayer's property compared to similar classes. The court stated that the intent of the Legislature, regarding the law allowing the court to provide relief in cases of overvaluation, was to allow relief only in cases where property is valued higher than just value. If the taxpayer's property is assessed at market value and other, similar properties are undervalued, the court will not award an abatement to the taxpayer. As such, the court rejected evidence showing a potential disproportionate valuation. The court said that the plaintiff (on which the burden of proof rested) did not present convincing evidence that its property was overvalued and ruled in favor of the defendant.

The court also made two other influencing statements in this case. First, it said that valuations in years other than the year being considered have no bearing on the value of property in the considered year. Second, the court clarified that a successful appeal of a denied abatement does not void the entire assessment.

Pentecostal Assembly of Bangor v. Maidlow, 414 A.2d 891 (Me. 1980). The plaintiff constructed a single-family residence on a 1 acre lot formed out of the large lot on which the main church building stood. The church custodian and his family lived in the house, its only use. The Bangor assessor taxed the 1 acre lot and residence. Plaintiff argued for exemption as property owned and occupied solely by a benevolent and charitable institution. Justice Godfrey's analysis concluded that although some activities of the Assembly may be properly classified as benevolent and charitable, it did not meet the condition for exemption. The Assembly was organized as a church and is conducted primarily as a church. Religious purposes are not equivalent with benevolent and charitable purposes. Since the Assembly cannot be characterized as a benevolent and charitable institution for purposes of 36 M.R.S. § 652(1)(A), the court did not have to reach the question of whether the property used by the custodian was "occupied or used by" the Assembly solely for its own purpose.

Perry v. Lincolnville, 75 A.2d 851 (Me. 1950). The defendant, Town of Lincolnville, requested a true and perfect list of taxable property from the plaintiff taxpayer. The plaintiff submitted the list to the town by registered mail, then subsequently requested an abatement. The town determined that the plaintiff was barred from abatement because they didn't personally deliver the true and perfect list, as required by law. The plaintiff appealed. The court ruled that, under modern conditions, the legal requirement to "bring in" a list is met if the list is filed with the assessor. Filing a list includes sending it by mail. The court quoted Lord Coke, a noted British justice, who said (translated) "When the reason of the law ceases, so does the law itself." When the law was written, personal delivery of a true and perfect list was the logical method. At the time, there was no postal service as there is now. Further, personal delivery by all taxpayers to the municipal offices on the same day would be a burdensome process. The court ruled in favor of the plaintiff.

Petrin v. Scarborough, 2016 ME 136, 147 A.3d 842. The plaintiff taxpayers argued that the defendant town had unequally assessed certain waterfront property that resulted in higher property tax bills for the plaintiffs. The challenged assessment practice, the 'abutting property program', involved separate, adjoining lots with the same owner. The town valued two adjoining lots as a single parcel, valuing the second lot as excess acreage, sometimes at a deep discount. The town, however, retained the lots as separate assessments and sent separate tax bills to the owners of the lots. The court ruled that separate lots cannot be considered a single parcel simply because they are adjacent. The plaintiffs are entitled to an abatement of taxes due to the additional burden imposed from the adjacent lot discount practice for the 2014 tax year. Going forward, the town must value the separate lots individually, presumably unless a taxpayer takes action to combine them into a single lot. The plaintiffs also argued that the town's partial revaluation improperly targeted waterfront property. The court rejected that argument.

Portland Terminal Co. v. Hinds, 39 A.2d 5 (Me. 1944). The defendant, assessor for Portland, taxed both land and buildings to the plaintiff taxpayer. The plaintiff owned the land and leased it to other entities. The buildings on the leased land were owned by those other entities. The plaintiff filed for abatement of the portion of taxes assessed on the buildings. The defendant argued that buildings should be taxed to the owner of the land and presented several Massachusetts law court decisions in support of that position. The court ruled that Massachusetts law specifically taxes property in this way and that there is no corresponding Maine law. The court looked to other states, specifically New York, to determine that ownership of the buildings represents a property right separate from the ownership of the land and the building owners should be taxed separately for that right. The court found in favor of the plaintiff.

Quoddy Realty Corp. v. Eastport, 1998 ME 14, 704 A.2d 407. The plaintiff taxpayer purchased property in Eastport for $40,000. The defendant town assessed the property at $292,597. The plaintiff requested abatement and submitted a separate appraisal of the property of $69,250. The town denied the abatement, claiming that their appraisal method was fair and equitable. The plaintiff appealed; the Superior Court agreed with the plaintiff that the property was overvalued and ordered the town to assess a value of $69,250. The town appealed. The court ruled that the Superior Court erred in placing a specific value on the property; instead the lower court should have remanded the case back to the county commissioners for an independent appraisal. The law court did, however, agree with the lower court in that the town had overassessed the property. The town was under the mistaken impression that a single valuation method must be used for all property and that all other methods were not to be considered. The court stated that the goal of appraisal is to estimate market value and, while one method may be used predominantly, the other methods should be considered to achieve just value.

Ram's Head Partners v. Cape Elizabeth, 2003 ME 131, 834 A.2d 916. In this case, the plaintiff taxpayer argued not that their property was overvalued, but that several nearby lots were significantly undervalued and that caused unjust discrimination against the taxpayer. The plaintiff municipality claimed that the taxpayer's property was properly assessed. The court ruled that unjust discrimination can be proved by evidence that similar property is undervalued and, in that case, the plaintiff's property value must be abated, even if that value is properly assessed. In this particular case, the reasoning for the board of assessment appeal denial was unclear, so the court remanded the case back to the board with instructions for conducting a new hearing.

Rockland v. Farnsworth, 111 Me. 315 (1913). This case was an action of debt brought by the City of Rockland against Lucy Farnsworth, executrix of the last will and testament of James Farnsworth, to recover taxes assessed against her for the years 1907, 1908 and 1909. Because such an action does not involve a forfeiture of property, it may be defeated only by such omissions or defects which relate to the authority of the assessors to assess the tax, or the deprivation of a substantial right of the defendant, or by some omission of an essential prerequisite to the bringing of the action. Justice Cornish delivered the Court's decision in response to the 7 points raised by the defendant.

1. Wrong characterization of the person assessed. In 1907, the assessment is against "Lucy C. Farnsworth executrix estate of James R. Farnsworth." In fact, she was administratrix of the estate with will annexed. For 1907 and 1909, the variance was immaterial; for 1908 the failure to name the estate was not fatal. Property ownership carries a responsibility to pay a just proportion of taxes, and it is not possible to escape this obligation because of harmless errors and frivolous objections. The omission neither questioned the jurisdiction of the assessors nor deprived the defendant of any substantial right.

2. Insufficient designation of property assessed. The assessment for each year was simply for "personal estate $10,000". Since the record showed the amount of personal estate liable to taxation was far in excess of the amount assessed, the meagerness of the description had no effect upon her legal rights or her legal burdens. Furthermore, the defendant had it in her power to make the description accurate and complete by filing the list required by law, which she did not do.

3. Interlineation in the assessment of 1907. When taxable items were copied from the inventory to the assessment record, and it was discovered that this particular tax was mistakenly omitted, the interlineation (writing between the lines) was made in accordance with the facts before the commitment to the collector. Such errors are correctable.

4. No personal property was shown to be in the hands of defendant. Farnsworth died in 1905. Following litigation, the defendant was appointed personal representative and from that time forward, in the eyes of the law she had all the goods and estate in her possession. Physical possession was not necessary. Defendant was legally taxable for that property in 1907, and since she never notified assessors of any distribution of the estate, the liability continued through 1908 and 1909.

5. Insufficient notice to taxpayers. The seasonal notice to taxpayers to file a list is no longer a condition precedent to a valid assessment, and an action to recover a tax can be maintained even if the assessors have not complied with this requirement (Boothbay v. Race).

6. Tax Collector not legally elected. Any irregularity in the election of the collector had no effect on the validity of the assessment or the obligation of the defendant to pay it.

7. Insufficiency of direction to bring suit. The direction to bring this suit was given by the mayor and treasurer to the city solicitor; defendant argued it should have been given to the collector as provided by statute. The Legislature never intended to prevent a municipality from bringing such a suit in its own name.

Rockland was awarded a judgment for the three years of unpaid taxes plus interest from the date of demand.

Rockland v. Ulmer, 24 A. 949 (Me. 1892). The defendant taxpayer claimed that his assessment for 1888 was illegal for two reasons: 1) The plaintiff, City of

Rockland, combined municipal, county, and state taxes into one bill. This, argued the defendant, was illegal because the county and state taxes were not due to the municipality; and 2) The plaintiff combined three noncontiguous lots owned by the defendant into a single assessment. The defendant claimed that this combination was not authorized and, therefore, illegal. The court stated that neither of these "irregularities" changed the defendant's assessment nor his tax due. The court ruled that the municipality, authorized by the Legislature and acting as the agent for the county and the state, was legally responsible for collecting the municipal, county, and state taxes and combining those taxes into one bill was not illegal. The court also found that, while it may limit the lien process, combining noncontiguous lots with the same owner did not violate the law. The assessment was not illegal and the defendant was liable for the full amount of the tax.

Salvation Army v. Standish, 1998 ME 75, 709 A.2d 727. The defendant, Town of Standish, assessed property tax against property owned by the plaintiff taxpayer. The plaintiff argued that the property is exempt property of a benevolent and charitable institution. The property in question was used by the plaintiff as a summer camp for underprivileged children. Some of the cabins on the property were occasionally rented by officers of the plaintiff organization for vacations. The defendant claimed that 1) the plaintiff was a religious society and not entitled to a charitable exemption; 2) the property was not used solely for charitable purposes; and 3) use of the cabins by officers violated the compensation limitations of the law, which allow for only reasonable compensation for employees of a charitable organization. The court ruled 1) the religious aspect of the plaintiff organization did not preclude an exemption; 2) the property was, in fact, owned and occupied for the plaintiff's own charitable purposes; and 3) the incidental use of cabins by officers fell under the realm of reasonable compensation.

Sawyer v. Gilmore, 83 A. 673 (Me. 1912). The plaintiff, a taxpayer in the unorganized territory, claimed that the state violated the Maine Constitution by imposing a portion of property tax for education on all property in the state, but distributing that tax only to organized municipalities. The court said that the Constitution requires equal application of tax on all property in the state. The Constitution does not require equal distribution of the taxes collected. The court stated that "[I]t is not necessary that the benefits arising [from taxes] should be enjoyed by all the people in equal degree nor that each one of the people should participate in each particular benefit." The court found no constitutional violation.

Schwanda v. Bonney, 418 A.2d 163 (Me. 1980). The plaintiff, a resident of Freeport, applied for a concealed gun permit from the defendant town. The town, which had an ordinance imposing stricter licensing requirements than the state law, denied the plaintiff's request. The town argued that because the state law stated that a town <u>may</u> issue a license under certain conditions, the town was authorized to enact greater restrictions. The court ruled that the Legislature did not authorize municipalities to create restrictions more stringent than state law. In the opinion, Justice Dufresne wrote: "[I]t is an accepted principle of statutory construction that, when the word 'may' is used in imposing a public duty upon public officials in the doing of something for the sake of the public good, and the public or third persons have an interest in the exercise of the power, then the word 'may' will be read 'shall,' the exercise of the power being deemed imperative by legislative intendment." The court ruled in favor of the plaintiff.

Seaborne v. Look, 464 A.2d 221 (Me. 1983). The plaintiff taxpayer appealed an abatement denial to Superior Court. The lower court determined that, since the plaintiff was not the owner of the property, she had no standing to appeal. The court ruled that she was not aggrieved by the tax assessment and dismissed her appeal. The plaintiff appealed to the law court. The law court ruled that the lower court did not identify whether the plaintiff was a nonowner in possession of the property, which would have given her standing to appeal the abatement denial. The court vacated the lower court's decision and sent the case back to the lower court to review the case.

Sears, Roebuck & Co. v. Presque Isle, 107 A.2d 475 (Me. 1954). The plaintiff claimed that real estate in Presque Isle for 1953 was assessed at only 47% of its value, but that its personal property was assessed at 80% of value and this violated the equality required by Art. IX, Section 8 of the Constitution. Chief Justice Fellows wrote the decision which was premised by the observation that taxation must be practical and that the practical methods and results of honest, though inexperienced assessors, who live in the town or city, are much more valuable, and as likely to be correct, as are the theoretical contentions of expert political economists. The plaintiff was burdened with proving that his property was overrated or that an unjust discrimination exists. The Assessor testified that all property, real and personal, was assessed at 80% of its value in 1953. The assessors used 1940 valuations prepared by a professional appraisal company for the town in 1949 and, in each instance, had increased them by 25% to reflect 1953 values and then used 10% of this value as the basis for assessment unless there was some determining factor to alter their decision. Adjustments were made for new buildings, razed buildings, etc. The court ruled that true and exact "market" or "just" values cannot be certain. It is the judgment of the assessors when considering valuation for tax purposes that controls, unless it is so unreasonable that an injustice results or there is unjust discrimination, or that the assessment was fraudulent, dishonest or illegal. The value of the plaintiff's personal property was arrived at by taking 80% of that reported by the taxpayer as its value. This was consistent with their belief that all other property was being assessed at 80% of its current worth. While perfection in the assessment may not have been attained, there was no proof of a scheme to discriminate. The assessor's assessment was not manifestly wrong nor was there an unjust discrimination denying the equal protection of the law. The plaintiff did not establish that he was aggrieved.

Sebago v. Drummond, 402 A.2d 469 (Me. 1979). The defendant taxpayer appealed the denial of an abatement request and received a reduced valuation by the county commissioners. The plaintiffs, tax assessors for the Town of Sebago, appealed the reduced valuation. The court ruled that "tax assessors are improper parties in tax abatement proceedings." Judgment for the taxpayer.

Shawmut Inn v. Kennebunkport, 428 A.2d 384 (Me. 1981). The plaintiff taxpayer appealed the valuation of its property by the defendant town. The town valued the property at $1.7 million, while a stock sale of the company generated $830,000. The plaintiff argued that the town's valuation method was unlawful, in that only the cost method was considered, and the reliance on a single method resulted in an overvaluation. The court ruled that the plaintiff did not meet its burden of proof that the method of valuation used "violated the principle of equality mandated by the Maine Constitution." The cost method, in itself, is not a flawed valuation method and the plaintiff did not show that the town willfully rejected considering other valuation methods. To the issue of overvaluation, the plaintiff claimed that the defendant did not make a value reduction for external obsolescence. The court ruled that a reduction of this nature is not required merely because the assessors' cards contain a line for it. The local assessor is the best person to determine whether external obsolescence applies to a property. The plaintiff further argues that the sale of the company through a stock sale is the best determiner of market value. The court, however, found that the sale may not have represented an arms-length transaction. The court ruled in favor of the defendant town, denying the plaintiff's abatement request.

Shawmut Manufacturing Co. v. Benton, 122 A. 49 (Me. 1923). The plaintiff owned a dam across the Kennebec River and appealed a denial of abatement by the Benton assessors for taxes levied in 1920 by arguing that the property was overrated relative to other property in town and therefore represented an unjust discrimination by scheme of the assessors.

Justice Dunn reviewed the applicable law as follows after dismissing questions of town boundary and use of the terms "privilege water right" in the assessment. There are two ways in which a taxpayer may be wronged in the levying of taxes: he may be excessively valued, or he may be taxed on the basis of just value of his property while, by assessors' scheme, other like property is assessed at less than just value. Equality of taxation is violated in each case. The court held that the right of a taxpayer whose property alone is taxed at 100% of its true value should have his assessment reduced to the same percentage of value as other taxpayers, based on the principle that where it is impossible to secure both the standard of true value, and the uniformity and equality required by law, the latter requirement is to be preferred. A witness for the plaintiff testified that after reviewing 14 recently sold lots, his conclusion was that property was taxed at from 55 to 60% of its just value. But the witness never differentiated the valuation of the plaintiff's property. In the Court's eye, he left it with a valuation comparable with that of all other real estate, and bearing no more tax than its share. The court was not convinced, based on the evidence presented, that a manifestly wrong overvaluation occurred or that there was an unjust discrimination that denied equal protection of the law. The appeal was dismissed.

Silverman v. Town of Alton, 451 A.2d 103 (Me. 1982). Certain real estate owned by trustees of the Hirundo Wildlife Trust was assessed by the Alton assessors. The trust was to be operated exclusively to preserve and maintain the Hirundo Wildlife Refuge for the sole benefit of the University of Maine. The trust was irrevocable and legal title rested with the trustees. The plaintiffs argue that where the legal title is vested in trustees for the sole benefit of the University, a scientific institution, that ownership of the equitable or beneficial title brings the property within the tax exemption statute. Justice Dufresne wrote that the trust, although tied in with a purpose to benefit the University, invests the trustees with such broad powers and active duties of management as to negate any possibility of viewing the University's "equitable title" as equivalent to the meaning of ownership and occupation or use of the property "solely for its own purposes" by the University as a scientific institution within the meaning of 36 M.R.S. § 652(1)(B). The primary purpose in setting up the trust was the creation and maintenance of a wildlife refuge or sanctuary, which in and of itself is not a scientific institution; and the incidental scientific objective to benefit the University by permitting use of the property in conjunction with scientific studies is insufficient to qualify for exemption. Exemption statutes are traditionally interpreted strictly. An exemption must be clearly within the scope of the statutory provisions.

Snow v. Weeks, 1 A. 243 (Me. 1885). The defendant tax collector arrested the plaintiff taxpayer for nonpayment of taxes. The plaintiff claimed that the arrest was illegal because the town did not, by vote, establish a due date for taxes. The defendant argued that, since a date establishing when interest on unpaid taxes would begin was voted on, that date effectively establishes the tax due date. The court ruled that a begin date for interest was not the same as a due date for taxes. Therefore, the plaintiff's arrest was illegal.

Solon v. Holway, 157 A. 236 (Me. 1931). The defendant taxpayer claimed a veteran exemption as the widow of a Civil War veteran. The defendant was married to a veteran who died. The widow then remarried. After the second husband died, the defendant claimed a veteran exemption. The court ruled that when the widow remarried, she ceased to be a widow and that when the second husband died, her status did not revert to that of the widow of her first husband. The court denied the defendant's exemption claim.

Spear v. Bath, 130 A. 507 (Me. 1925). The plaintiff taxpayer appealed the defendant city's denial of an abatement request. The plaintiff presented as evidence the sale price of the property that the plaintiff paid the previous year was significantly lower than the assessed value. The court ruled that, since the sale was at an auction, the price paid by the plaintiff is not a good indicator of the fair market value of the property. The plaintiff had purchased the property for resale, so he must have thought the price he paid was a bargain and, in fact, the property was advertised as being a bargain. The court stated that "A real estate bargain price is presumably somewhat less than the market value." The court denied the plaintiff's appeal.

Springfield v. Butterfield, 56 A. 581 (Me. 1903). The defendant taxpayer challenged the legality of his tax assessment. One of the plaintiff town's assessors had previously been a tax collector. This person had not been legally discharged from duties as a collector when elected as assessor. Because the person was still obligated as collector, holding office as assessor was illegal. The other two assessors were legally elected. The court found that the one illegally elected assessor voided the town's assessment for that year and the town was not authorized to collect that tax. Judgment for the defendant.

State v. Hamlin, 30 A. 76 (Me. 1894). The plaintiff, State of Maine, appealed a lower court decision allowing the application of a $500 taxable threshold to each beneficiary of a decedent's estate for purposes of the state inheritance tax. The state argued that the threshold should be applied to the entire estate and the value of property in excess of that amount is taxable. The court ruled that the threshold applied to each beneficiary prior to the tax calculation.

The defendant, beneficiaries of the estate, argued that the inheritance tax itself violated state and federal constitutional provisions. The defendant claimed that the tax violated Article IX, Section 8 of the Maine Constitution, which requires the value of property in the state be equally apportioned and assessed. The court ruled that the constitutional provision applied to property tax and that the inheritance tax is an excise tax because the rate is not calculated based on the total amount of revenue required to be raised. The defendant also argued that the tax violated the U.S. Constitution, which provides for the defense of acquiring and possessing property. To that argument, the court stated "There is no provision of our constitution, or that of the United States, which secures the right to anyone to control or dispose of his property after his death, nor the right to any one, whether kindred or not, to take it by inheritance." The court ruled that any acquisition and possession rights held by the decedent expired when the decedent died.

State v. Keith, 166 A.2d 485 (Me. 1960). The plaintiff, State of Maine, appealed a lower court decision in favor of the defendant taxpayer. The taxpayer had an outstanding tax due to the state. The state mistakenly sent a bill for a smaller amount than that due and the taxpayer paid that amount. In a letter with the payment, the taxpayer wrote that acceptance of the check constituted payment in full. On receipt of the submission, the processing section of the Bureau of Taxation deposited the check. The taxpayer claimed that this constituted payment in full and the lower court agreed. The Supreme Court ruled that the act of processing a check by a state employee does not certify payment in full of an outstanding tax balance due. Judgment for the plaintiff.

State v. Rand, 366 A.2d 183 (Me. 1976). The plaintiff, State of Maine took, through eminent domain, property of the City of Portland to construct a highway. A relative of the defendant had donated the land to the city to be used as a park. The state made a payment of $30,000 to the city for the land, which the city intended to use to relocate the park to a nearby location. The defendant claimed that the taking of the land represented a violation of the original donation and the heirs of the donor were entitled to the payment. The court ruled that the original gift was in the manner of a trust, rather than fee simple and the city, as trustee, was responsible for the administration of the trust. The court further ruled that the location of the park was a less important intent of the donor than was the existence of the park in perpetuity. Therefore, the court ruled that the payment should go to the city for relocation of the park.

State v. Western Union, 73 Me. 518 (1882). The plaintiff, State of Maine, assessed a tax on the defendant business. The tax was based on the value of certain property owned and used by telegraph companies. The defendant claimed that the tax was unconstitutional in that it was a property tax imposed only on a specific business type. The defendant argued that the tax was not assessed equally on all business types. The court ruled that the tax, while calculated based on the value of property, was a tax on business operations, rather than on property. The property value was simply a measure of the business activity. Because the tax was imposed on business activity instead of on property, the law taxing only a certain type of business did not violate the constitutional requirement to assess all property equally. The court ruled in favor of the state and allowed the tax.

Sweet v. Auburn, 180 A. 803 (Me. 1935). The plaintiff appealed the denial of the Auburn assessors to grant an abatement of 1933 property taxes. The petitioner claimed that the valuation ($191,000) was greatly in excess of just value and that the tax was unequal because the assessment was at a higher percent of true value than other property in the city. The property was a shoe factory built in 1908 and expanded in 1912 and 1914 so that, by 1916, the total net book value of the land and buildings stood at $184,647. The property was transferred in 1932 (during the Great Depression) for $100,000. Plaintiff argued that the original cost of construction did not relate to current replacement cost because the structure was overbuilt and that contemporary establishments of comparable utility were being built at considerably less cost. The defendant offered evidence of the reproduction cost less depreciation figured at approximately $179,000; the assessment value of the building alone was $120,000 that was not inconsistent with the assessors' claim that property was assessed at approximately 75% of true value.

Justice Thaxter cited that value is the highest price that a normal purchaser would pay, and that assessors should recognize that the true value of real estate is fairly constant and gauged by conditions that are measurably stable over time. Since violent fluctuations in municipal income are undesirable, assessors may, to a certain extent, disregard the temporary impact of acute economic conditions. The taxpayer had not carried his burden of proving that the valuation was excessive or at a greater percent of true value than other taxable property.

Sweetsir v. Chandler, 56 A. 584 (Me. 1903). The Town of New Gloucester assessed the property of the defendant taxpayer. When additional stocks and bonds owned by the defendant were discovered, the town issued a supplemental assessment. The defendant refused to pay, arguing that the supplement was not part of the voter-approved tax to be raised by the town. The court ruled that the law requiring a municipality to vote on the tax to be collected did not apply to supplemental assessments. The court further ruled that only part of the supplemental assessment was valid. The original assessment included other bonds known to the town. The additional bonds later discovered were not eligible for supplemental assessment because they represented an error of the assessors as to quantity, rather than an omission, which the court has previously required as a basis for a supplemental assessment. The stocks, the court said, were eligible for supplemental assessment.

Terfloth v. Scarborough, 2014 ME 57, 90 A.3d 1131. The plaintiff taxpayer argued that the defendant town substantially overvalued his property. The taxpayer argued that the purchase price, which was significantly lower than the assessed value, was the fair market value. The town responded that, since the property had been on the market for over three years, the sale price did not represent an arm's-length transaction. The court found insufficient evidence to show that the sale was not an arm's-length transaction. The court ruled that, while a sale price is not proof of fair market value, the town did not give the property sale price enough weight in determining assessed value. The court remanded the case – through Superior Court – to the Scarborough Board of Assessment Review for value adjustment.

Thorndike v. Camden, 19 A. 95 (Me. 1889). The plaintiff was the tax collector in Camden who had been given a proper warrant to collect taxes legally assessed by the assessors. He made no effort to collect a tax against "D. Knowlton & Co.," but instead took a note and personally accounted to the town treasurer for it as money. The taxpayer became insolvent and never paid the note. Twelve years later the town voted to refund the money paid by the plaintiff for the tax that was never collected and to raise the money through taxation. Justice Emery held that the town could not impose a tax for this purpose and that the claim was from a public officer to be paid for a loss suffered by his neglect of a public duty and that it was not incident to or connected with the exercise, by the town, or its legal powers. The tax collector and assessors are public officers. Their authority is from the statutes, and they cannot be controlled by the town in the execution of that authority. No vote of the town can relieve the assessors of any part of their statutory duty. For a town to compensate a collector would be in effect abating the taxes he omitted to collect. A town has no power to abate a tax. To concede that a town can directly or indirectly abate a tax by vote in town meeting is to concede the power of a town to determine who shall pay taxes, and who shall be exempt, and the consequent power to place the public burdens wholly on who the majority singles out. A town has no such power, and the Legislature cannot confer it. The town could not do indirectly what it had no power to do directly.

Topsham v. Purinton, 47 A. 919 (Me. 1900). The plaintiff town imposed a supplemental assessment against the defendant taxpayer. The defendant argued that the supplemental assessment was illegal. The town added the supplemental assessment to the original assessment book without obtaining signatures of the assessors and a statement that the property was omitted from the original assessment. The court ruled that the plaintiff did not follow the statutory requirements for supplemental assessments and found in favor of the defendant.

U.S.A. v. Arlington County, 326 F.2d 929 (4th Cir. 1964). The defendant, a county in Virginia, assessed personal property tax on the property of a servicemember. The property was located in Virginia while the servicemember was stationed out of state. The defendant argued that the servicemember voluntarily left his property in Virginia and it was, therefore, taxable. The court ruled that, according to the Soldiers' and Sailors' Civil Relief Act (now the Servicemember's Civil Relief Act), only a servicemember's home state can tax the property of that servicemember, regardless of where the property is physically located. Property of a servicemember is deemed to be located in the servicemember's home state. In this case, the servicemember was domiciled in New Jersey, so the court ruled that the property was not taxable to Virginia.

U.S.A. v. Chester County Board of Assessment, 281 F. Supp. 1001 (E. Dist. Pa. 1968). The defendant, a county in Pennsylvania, assessed real estate tax on house trailers owned by servicemembers who were residents of other states. The defendant argued that the house trailers were real estate and taxable in Pennsylvania. The plaintiff argued that the trailers, according to the Soldiers' and Sailors' Civil Relief Act (now the Servicemember's Civil Relief Act), the trailers were considered personal property and, therefore, not taxable by Pennsylvania. The court ruled that the Soldiers' and Sailors' Civil Relief Act determined congressional intent to free servicemembers from the burden of local property tax. The court further ruled that congressional intent took precedence over state law, therefore the trailers were not taxable to Pennsylvania.

Vigue v. Chapman, 24 A.2d 241 (Me. 1941). Plaintiff sought to recover land claimed by the defendants under a conveyance from the inhabitants of the town as a result of a tax lien foreclosure. Vigue claimed that town officials did not comply with all requirements of law necessary to enforce forfeiture for nonpayment of taxes. The decision of Justice Murchie hinged on the fact that there was no proof on record that the assessors ever signed a tax assessment against any property, or that they ever signed a warrant committing any taxes for collection. It is only by proper assessment that a lien can be created; no lien enforcement is available against an improper assessment.

Weekley v. Scarborough, 676 A. 2d 932 (Me. 1996). The plaintiff taxpayer appealed an assessment by the defendant town, claiming the town assessed their property at higher than just value. The Board of Assessment Review denied the appeal, but the Superior Court overruled that denial and applied the original sales price as the properly assessed value. The law court ruled that the taxpayer had proven that the town's assessed value was too high, but overturned the Superior Court's valuation, stating that the court did not have authority to assign a value to the property. The law court remanded the case to the Board of Assessment Review for adjustment of the property value.

Whiting v. Lubec, 115 A. 896 (Me. 1922). The plaintiff, Town of Whiting, assessed property owned by the defendant, Town of Lubec, and located in Whiting. The defendant argued that all property owned by a municipality is exempt from tax. The plaintiff argued that, when property is in another municipality, the exempt nature of municipally-owned property is limited by law. The court agreed with the plaintiff and allowed taxation of some of the property in Whiting owned by Lubec. Exemption applied only to property specifically exempted by statute.

Williamsburg v. Lord, 51 Me. 599 (1863). This action was brought to recover certain parcels of land in Williamsburg that were presumably forfeited by Mr. Lord for nonpayment of taxes assessed in 1854. Justice Cutting operated on the assumption that forfeiture of title in tax enforcement proceedings is contingent upon strict compliance with every legal requirement relating to the assessment and collection of the tax. Williamsburg's 1854 Annual Town Meeting apparently chose John Dunning, Adams Merrill and John Clifford to serve as selectmen/assessors; but the record did not indicate that Mr. Merrill was ever sworn as an assessor. The court held that a three-member board of assessors is not authorized to assess a tax when only two are qualified and sworn. A defective tax assessed by a de facto board nullifies subsequent enforcement action to collect the tax.

Young v. Johnson, 207 A.2d 392 (Me. 1965). The plaintiff sought to compel the State Tax Assessor to cause properties of the Jackson Memorial Laboratory in Bar Harbor to be placed on the tax rolls. Justice Siddal wrote that the Assessor could not be compelled to require local assessors to include property on the tax rolls that they believed to be tax exempt. The State Tax Assessor has discretion in issuing such an order and he has a right to exercise this discretion. The court ruled that no writ of mandamus could, as a matter of law, be issued to "cause to be placed upon the assessment roll for taxation" real or personal property. The court cannot control the discretion of public officers when they are required to act in a judicial or deliberate capacity, but officials can be compelled to exercise their discretion.