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PROPERTY TAX BULLETIN NO. 10

(Published under Appropriation No. 1037.1)
Issued July 30, 2003; Replaces June 13, 2001 Revision

SUBJECT: PROPERTY TAX ABATEMENT AND APPEALS PROCEDURES

REFERENCE: Title 36 MRSA, Sections 583, 706, 841-849 and 1118

1. In General. Section 8 of Article IX of the Maine Constitution provides that "All taxes upon real and personal estate . . . shall be apportioned and assessed equally according to the just value thereof." Title 36, section 701-A indicates that "in the assessment of property, assessors in determining just value are to define this term in a manner which recognizes only that value arising from presently possible land use alternatives to which the particular parcel of land being valued may be put." The term "just value" is essentially synonymous with fair market value (except in the case of classified farm, open space and forest lands, which are valued on the basis of current use.) While assessors are required to assess most property on the basis of just value, the constitutional requirement is not that property be assessed at just value, but rather that it be assessed in accordance with just value.

   Assessors adopt their own ratio, or percentage of just value at which they should assess all property within the confines of minimum assessing standards (§327, sub-§1). The ratio, or percentage of just value used by the assessors is annually certified to the State Tax Assessor. Therefore, in determining whether or not an assessed valuation is reasonable, the ratio so certified by the assessors must be taken into consideration. Municipal assessment ratio certified by local assessors may differ from the relevant assessment ratios contained in various studies produced by the Maine Revenue Services (§848-A).
   A property tax may be high, as compared with the tax on similar property in some other town, if the taxable resources of the town in which the property is taxable are poor, or if the needs of the town as reflected by appropriations are great. Thus the mere fact that a property tax is high is not grounds for seeking abatement.
   A property valuation may be increased from that of the previous year, even though nothing has occurred to increase the worth of the property, if the assessors find that the previous valuation had been less than it should have been. Assessors must adjust the assessed value for any property whenever the values are found to be inequitable. However, assessed values for property cannot be increased after property taxes for that tax year have been committed. Thus the mere fact that a valuation has been increased over that of the previous year is not grounds for seeking abatement. Note that no periodic notice to taxpayers is required.

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A property owner who believes the property tax is greater than it should be should first determine whether, in the owner's opinion, the valuation of that property is equitable in relation to similar property within the town. A property owner can do this by asking the assessor(s) for permission to examine the valuation book, and by comparing the valuation of the owner's property with that of similar properties with which the owner may be familiar. The valuation book is a public record and is available for public inspection at reasonable times and under reasonable safeguards. Discussion with the assessor(s) may also be helpful. If the property owner finds from such examination or discussion that the valuation bears the same relation to the just value of the owner's property as the average valuation of other properties bear to their just value, the owner has no sound basis for requesting abatement. Since variations are apt to be found in the valuation of properties in most towns, it is necessary to consider the average treatment of other properties; the fact that some properties may be found to be valued on a higher or lower basis is not significant if the range of deviation is not excessive.

If, after reviewing the valuation of property in this light, the property owner feels entitled to relief, the owner should follow the procedure outlined below.

2. Abatement. Abatement is the process by which valuation that is found to be excessive, in error or illegal may be corrected.

   This bulletin is concerned with abatements requested by the property owner or taxpayer.

3. Method of Seeking Abatement. The statutes provide that a property owner who believes his local property valuation is excessive must seek relief through a written request to the local assessors, made within 185 days after the date the tax was committed to the tax collector (which is usually shortly before the tax bill is mailed) stating the abatement requested, and the reasons for requesting the abatement.

   If the taxpayer is dissatisfied with the decision of the local assessors, the taxpayer may appeal within 60 days to the county commissioners; further appeal may be to the Superior Court within 30 days. (In those municipalities which have adopted a local board of assessment review, appeals which elsewhere could be made to the county commissioners must be made to the local board of assessment review.) Except that appeal pursuant to assessment under Current Use Law is to the State Board of Property Tax Review.

   A taxpayer does not lose the right to request abatement because of failure to file a list of the taxpayer's taxable property with the assessors unless taxpayer was specifically requested by mail by the assessors to furnish a list, and failed to do so. (T.36, section 706, fifth paragraph)

   Please note that neither the State Tax Assessor nor the Maine Revenue Services is authorized to abate taxes assessed in municipalities. Please note also that requests for abatement should not be made to the local tax collector. Tax collectors have no authority to make abatements. Requests for abatement must always be addressed, in the first instance, to the local assessing authority, and then to the appropriate appeals body, as indicated in the following sections of this Bulletin.

4. Statutory Provisions. The following sections of Title 36, MRSA contain the statutory provisions relating to abatement of local property taxes. Taxpayers that plan to seek abatement of local taxes should read these sections and follow them carefully.

Section 706. Taxpayers to list property, notice, penalty, verification.

Before making an assessment, the assessor or assessors, the chief assessor of a primary assessing area or the State Tax Assessor in the case of the unorganized territory may give seasonable notice in writing to all persons liable to taxation in the municipality, primary assessing area or the unorganized territory to furnish to the assessor or assessors, chief assessor or State Tax Assessor true and perfect lists of all their estates, not by law exempt from taxation, of which they were possessed on the first day of April of the same year.

The notice to owners may be by mail directed to the last known address of the taxpayer or by any other method that provides reasonable notice to the taxpayer. If notice is given by mail and the taxpayer does not furnish the list, he is barred of his right to make application to the assessor or assessors, chief assessor or State Tax Assessor or any appeal there

from for any abatement of his taxes, unless he furnishes the list with his application and satisfies them that he was unable to furnish it at the time appointed.
The assessor or assessors, chief assessor or State Tax Assessor may require the person furnishing the list to make oath to its truth, which oath any of them may administer, and may require him to answer in writing all proper inquiries as to the nature, situation and value of his property liable to be taxed in the State; and a refusal or neglect to answer such inquiries and subscribe the same bars an appeal, but such list and answers shall not be conclusive upon the assessor or assessors, chief assessor or the State Tax Assessor.
If the assessor or assessors, chief assessor or the State Tax Assessor fail to give notice by mail, the taxpayer is not barred of his right to make application for abatement provided that upon demand the taxpayer shall answer in writing all proper inquiries as to the nature, situation and value of his property liable to be taxed in the State; and a refusal or neglect to answer such inquiries and subscribe the same bars an appeal, but such list and answers shall not be conclusive upon the assessor or assessors, chief assessor or the State Tax Assessor.

Section 841. Abatement by assessing authority; procedures.

A. Error or mistake. The assessors, either upon written application filed within 185 days after the date that the tax was committed stating the grounds for an abatement <u>or</u> on their own initiative *within* one year after tax commitment, may make such reasonable abatement as they consider proper to correct any illegality, error or irregularity in assessment, provided the taxpayer has complied with section 706.

The municipal officers, either upon written application filed *after* one year *but within* 3 years after the tax commitment date stating the grounds for abatement or on their own initiative within that period may make such reasonable abatement as they consider proper to correct any illegality, error or irregularity in assessment, provided the taxpayer has complied with section 706. The municipal officers *have no authority to grant an abatement to modify or adjust the valuation of property.*

B. Infirmity or poverty. The municipal officers or the State Tax Assessor for the unorganized territory, within 3 years from commitment, may on their own knowledge or on written application therefore, make such abatements as they believe reasonable on the real and personal taxes on all persons who, by reason of infirmity or poverty, are in their judgment unable to contribute to the public charges.

Hearings and proceedings held pursuant to this subsection shall be in executive session and information submitted in support of an application under this subsection shall be confidential. The municipal officers or the State Tax Assessor for the unorganized territory may extend the 3-year period within which they may make abatements under this subsection.

C. Inability to pay after 2 years. If after 2 years from the date of assessment a collector is satisfied that a tax upon real or personal property committed to him for collection cannot be collected by reason of the death, absence, poverty, insolvency, bankruptcy or other inability of the person assessed to pay, he shall notify the municipal officers thereof in writing, under oath, stating the reason why that tax cannot be collected. The municipal officers, after due inquiry, may abate that tax or any part thereof.

D. Veteran's widow or minor child. Notwithstanding failure to comply with section 706 or section 1231, the assessors, on written application within one year from the date of commitment, may make such abatement as they think proper in the case of the unremarried widow or minor child of a veteran, which widow or child would be entitled to an exemption under section 653, subsection 1, paragraph D., except for her or his failure to make application and file proof within the time set by section 653, subsection 1, paragraph G, provided that the veteran died during the 12-month period preceding the April 1st for which the tax was committed.

E. Certification, record. Whenever an abatement is made, other than by the State Tax Assessor, the abating authority shall certify it in writing to the collector, and that certificate shall discharge the collector from further obligation to collect the tax so abated. When the

abatement is made, a record setting forth the name of the party or parties benefited, the amount of the abatement and the reasons for the abatement shall, within 30 days, be made and kept in suitable book form open to the public at reasonable times; and a report of it shall be made to the municipality at its annual meeting, or to the mayor and aldermen of cities by the first Monday in each March.

F. Appeals. The decision of a chief assessor of a primary assessing area or the State Tax Assessor shall not be deemed "final agency action" under the Maine Administrative Procedure Act, Title 5, chapter 375.

G. Assessors defined. For the purposes of this Subchapter the word "assessors" includes assessor, chief assessor of a primary assessing area and State Tax Assessor for the unorganized territory.

H. Approval of the Governor. The State Tax Assessor may abate taxes under this section only with the approval of the Governor.

Section 842. Notice of decision.

The assessors or municipal officers shall give to any person applying to them for an abatement of taxes notice in writing of their decision upon the application within 10 days after they take final action thereon. The notice of decision must state that the applicant has 60 days from the date the notice is received to appeal the decision except that appeal to the Superior Court must be filed within 30 days from the date the notice of decision is received. The notice must also identify the board or agency designated by law to hear the appeal.

If the assessors or municipal officers, before whom an application in writing for the abatement of a tax is pending, fail to give written notice of their decision within 60 days from the date of filing of the application, the application is deemed to have been denied, and the applicant may appeal as provided in sections 843 and 844, unless the applicant has in writing consented to further delay. Denial in this manner is final action for the purposes of notification under this section but failure to send notice of decision does not affect the applicant's right of appeal.

Any agency to which an appeal is made is subject to the provisions for notice of decision in section 842.

Section 843. Appeals.

1. Municipalities. If a municipality has adopted a local board of assessment review and the assessors or the municipal officers refuse to make the abatement asked for, the applicant may apply in writing to the local board of assessment review within 60 days after notice of the decision from which the appeal is being taken or after the application is deemed to have been denied, and, if the board thinks the applicant is over assessed, the applicant is granted such reasonable abatement as the board thinks proper. Except with regard to nonresidential property with an equalized municipal value of $1,000,000 or greater, either party may appeal from the decision of the board of assessment review directly to the Superior Court within 30 days, in accordance with Rule 80B of the Maine Rules of Civil Procedure. If the board of assessment review fails to give written notice of their decision within 60 days of the date the application is filed, unless the applicant agrees in writing to further delay, the application is deemed denied and the applicant may appeal to Superior Court as if there had been a written denial.

1-A. Nonresidential property exceeding $1,000,000. With regard to non-residential property with an equalized municipal valuation of $1,000,000 or greater, either party may appeal the decision of the local board of assessment review to the State Board of Property Tax Review within 60 days after notice of the decision from which the appeal is taken or after the application is deemed to be denied. The board shall hold a hearing de novo. If the board thinks that the owner is over assessed, it shall grant such reasonable abatement as the board thinks proper.

2. Primary assessing areas. If a primary assessing area has adopted a board of assessment review and the chief assessor, municipal officer or the State Tax Assessor refuses to make the abatement asked for, the applicant may apply in writing to the board of assessment review within 60 days after notice of the decision from which the appeal is being taken or after the application is deemed to have been denied, and if the board thinks the applicant is over assessed, the applicant is granted such reasonable abatement as the board thinks proper.

3. Payment requirements for certain taxpayers. A taxpayer must pay an amount of current taxes equal to the amount of taxes paid in the next preceding year or the amount of taxes in the current tax year not in dispute, whichever is greater, by the due date in order to enter an appeal under this section or to continue prosecution of an appeal pending under this section. If an appeal is in process upon expiration of a due date for payment of taxes *for any tax year* in a particular municipality, without the appropriate amount of taxes having been paid, the appeal process must be suspended until the appropriate amount of taxes, together with any accrued interest and costs, has been paid. However, the municipal officials and the taxpayer may mutually agree to a written schedule for payment of taxes due, in which case, the appeal may proceed provided taxes are paid in accordance with that written schedule for tax payment. This section does not apply to property with a valuation of less than $500,000 for tax years beginning on or after April 1, 1996.

Section 844. Appeals to County Commissioners.

1. Municipalities without board of assessment review. Except when the municipality or primary assessing area has adopted a board of assessment review, if the assessors or the municipal officers refuse to make the abatement asked for, the applicant may apply to the county commissioners within 60 days after notice of the decision from which the appeal is being taken or within 60 days after the application is deemed to have been denied. If the commissioners think that the applicant is over assessed, the applicant is granted such reasonable abatement as the commissioners think proper. If the applicant has paid the tax, the applicant must be reimbursed out of the municipal treasury, with costs in either case.

If the applicant fails, the commissioners shall allow costs to the municipality, taxed as in a civil action in the Superior Court, and issue their warrant of distress against the applicant for collection of such amount as may be due the municipality. The commissioners may

require the assessors or municipal clerk to produce the valuation by which the assessment was made or a copy of it. Either party may appeal from the decision of the county commissioners to the Superior Court within 30 days, in accordance with the Maine Rules of Civil Procedure, Rule 80B. If the county commissioners fail to give written notice of their decision within 60 days of the date the application is filed, unless the applicant agrees in writing to further delay, the application shall be deemed denied and the applicant may appeal to the Superior Court as if there had been a written denial.

2. Payment requirements for certain taxpayers. A taxpayer must pay an amount of current taxes equal to the amount of taxes paid in the next preceding year or the amount of taxes in the current tax year not in dispute, whichever is greater, by or after the due date in order to enter an appeal under this section or to continue prosecution of an appeal pending under this section. If an appeal is in process upon expiration of a due date for payment of taxes *for any tax year* in a particular municipality, without the appropriate amount of taxes having been paid, the appeal process must be suspended until the appropriate amount of taxes, together with any accrued interest and costs, has been paid. *However, the municipal officials and the taxpayer may mutually agree to a written schedule for payment of taxes due, in which case, the appeal may proceed provided taxes are paid in accordance with that written schedule for tax payment.* This section does not apply to property with a valuation of less than $500,000 for tax years beginning on or after April 1, 1996. (Note: Italics text effective Apr. 18, 2003)

Section 848-A. Assessment Ratio Evidence.

Reports of assessment ratios contained in assessment ratio studies of the Maine Revenue Services shall be prima facie evidence of what the reported ratio is in fact, unless a party to the proceedings related to a protested assessment establishes that the ratio was derived or established in a manner contrary to law or proves the existence of a different ratio.

In any proceedings relating to a protested assessment, it is a sufficient defense of the assessment that it is accurate within reasonable limits of practicality, except when a proven deviation of 10% or more from the relevant (overall) assessment ratio of the municipality or primary assessing area exists.

Section 849. Judgment and Execution.

Claims for abatement on several parcels of real estate may be embraced in one appeal, but judgment shall be rendered and execution shall issue for the amount of taxes due on each separate parcel.

The lien created by statute on real estate to secure the payment of taxes shall be continued for 60 days after the rendition of judgment, and may be enforced by sale of said real estate on execution, in the same manner as attachable real estate may be sold under Title 14, section 2201, and with the same right of redemption.

5. Current Use Appeals.

   Assessments made under the Tree Growth Tax Law or the Farm and Open Space Law are subject to the abatement procedures provided by Section 841 and 842. However, appeals from the decision of the assessors in such cases is to the State Board of Property Tax Review.

6. Interest.

   If the amount finally assessed is less than the amount which the taxpayer has already paid, the municipality shall reimburse an amount equal to the overpayment plus interest at a rate defined in Section 506-A.

7. Mailing Addresses and Telephone Numbers.

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NOTE: This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. If further information is needed contact the Property Tax Division of the Maine Revenue Services.

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RULE 80B. REVIEW OF GOVERNMENTAL ACTION

(a) Mode of Review. When review by the Superior Court, whether by appeal or otherwise, or any action or failure or refusal to act by a governmental agency, including any department, board, commission, or officer, is provided by statute or is otherwise available by law, proceedings for such review shall, except to the extent inconsistent with the provisions of a statute and except for a review of final agency action or the failure or refusal of an agency to act brought pursuant to 5 M.R.S.A. § 11001 et seq. of the Maine Administrative Procedures Act as provided by Rule 80C, be governed by these Rules of Civil Procedure as modified by this rule. The complaint and summons shall be served upon the agency and all parties in accordance with the provisions of Rule 4, but such service upon the agency shall not by itself make the agency a proper party to the proceedings. The complaint shall include a concise statement of the grounds upon which the plaintiff contends the plaintiff is entitled to relief, and shall demand the relief sought. No responsive pleading need be filed unless required by statute or by order of the court, but in any event any party named as a defendant shall file a written appearance within the time for serving an answer under Rule 12(a). Leave to amend pleading shall be freely given when necessary to permit a proceeding erroneously commenced under this rule to be carried on as an ordinary civil action.

(b) Time Limits; Stay. The time within which review may be sought shall be as provided by statute, except that if no time limit is specified by statute, the complaint shall be filed within 30 days after notice of any action or refusal to act of which review is sought unless the court enlarges the time in accordance with Rule 6(b), and, in the event of a failure to act, within six months after expiration of the time in which action should reasonably have occurred. Except as otherwise provided by statute, the filing of the complaint does not stay any action of which review is sought, but the court may order a stay upon such terms as it deems proper.

(c) Trial or Hearing; Judgment. Any trial of the facts where provided by statute or otherwise shall be without jury unless the Constitution of the State of Maine or a statute gives the right to trial by jury. The judgment of the court may affirm, reverse, or modify the decision under review or may remand the case to the governmental agency for further proceedings.

(d) Motion for Trial; Waiver. If the court finds on motion that a party to a review of governmental action is entitled to a trial of the facts, the court shall order a trial to permit the introduction of evidence that does not appear in the record of governmental action and that is not stipulated. Such motion shall be filed within 30 days after the complaint is filed. The failure of a party to file said motion shall constitute a waiver of any right to a trial of the facts. Upon filing of a motion for trial of the facts, the time limits contained in this rule shall cease to run pending the issuance of an appropriate order of court specifying the future course of proceedings with that motion. With the motion the moving party shall also file a detailed statement, in the nature of an offer of proof, of the evidence that the party intends to introduce at trial. That statement shall be sufficient to permit the court to make a proper determination as to whether any trial of the facts as presented in the motion and offer of proof is appropriate under this rule and if so to what extent. After hearing, the court shall issue an appropriate order specifying the future course of proceedings.

(e) Record. Except where otherwise provided by statute or this Rule, it shall be the plaintiff's responsibility to insure the preparation and submission to the Superior Court of the record of the proceedings of the governmental agency being reviewed. Except where otherwise provided by this Rule, the record for review shall be submitted at the same time as or prior to the plaintiff's brief. Where a motion is made for a trial of the facts pursuant to subdivision (d) of this

Rule, the moving party shall be responsible to insure the preparation and submission of the record to the court and such record shall be submitted with the motion.
The parties shall meet in advance of the time for filing the plaintiff's brief to agree on the record to be submitted. Where agreement cannot be reached, any dispute as to the record shall be submitted to the court. The record shall include the application or other documents that initiated the agency proceedings and the decision and findings of fact that are appealed from, and the record may include any other documents or evidence before the governmental agency and a transcript or other record of any hearings.
In lieu of an actual record, the parties may submit stipulations as to the record; however, the full decision and findings of fact appealed from shall be included.
(f) Review Limited to Record. Except where otherwise provided by statute or by order of court pursuant to subdivision (d) hereof, review shall be based upon the record of the proceedings before the governmental agency.
(g) Time for Briefs and Record. Unless otherwise ordered by the court, all parties to a review of governmental action shall file briefs. The plaintiff shall file the plaintiff's brief within 40 days after the date on which the complaint is filed. Any other party shall file that party's brief within 30 days after service of the plaintiff's brief, and the plaintiff may file a reply brief 14 days after last service of the brief of any other party. However, no brief shall be filed less than 6 calendar days before the date set for oral argument. On a showing of good cause the court may increase or decrease the time limits prescribed in this subdivision.
(h) Consequence of Failure to File. If the plaintiff fails to comply with subdivision (e) or (g) of this rule, the court may dismiss the action for want of prosecution. If any other party fails so to comply, that party will not be heard at oral argument except by permission of the court.
(i) Joinder With Independent Action. If a claim for review of governmental action is joined with a claim alleging an independent basis for relief from governmental action, the complaint shall contain a separate count for each claim for relief asserted, setting forth in each count a concise statement of the grounds upon which the plaintiff contends the plaintiff is entitled to relief and a demand for the relief sought. A party in a proceeding governed by this rule asserting such an independent basis for relief shall file a motion no later than 10 days after the filing of the complaint, requesting the court to specify the future course of proceedings, including the timing of briefs and argument and the scope and timing of discovery and other pretrial proceedings including pretrial conferences. Upon the filing of such a motion, the time limits contained in this rule shall cease to run pending the issuance of an appropriate order of court. After hearing, the court shall issue such order.
(j) Discovery. In a proceeding governed by this rule, discovery shall be allowed as in other civil actions when such discovery is relevant either to the subject matter involved in a trial of the facts to which the discovering party may be entitled or to that involved in an independent claim joined with a claim for review of governmental action as provided in subdivision (i) of this rule. No other discovery shall be allowed in proceedings governed by this rule except upon order of court for good cause shown.
(k) Pretrial Procedure. In the absence of a court order, the pretrial procedure of Rule 16 shall not be applicable to a proceeding governed by this rule.
(l) Scheduling of Oral Argument. Unless the court otherwise directs, all appeals shall be in order for oral arguments 20 days after the date on which the responding party's brief is due or is filed, whichever is earlier. The parties may, by agreement, waive hearing and submit the matter for decision on the record and the briefs. The clerk of the Superior Court shall schedule oral argument for the first appropriate date after an appeal is in order for hearing, and shall notify each counsel of record or unrepresented party of the time and place at which oral argument will be heard.
(m) Review by the Law Court. Unless by statute or otherwise the decision of the Superior Court is final, review by the Law Court shall be by appeal or report in accordance with these Rules of Civil Procedure, and no other method of appellate review shall be permitted.

Rule Amended effective February 15, 1990.