Municipal Assessment Manual:

A Legal Perspective

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Replacing 1973, 1988, 1989, and 1993 editions
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Introduction

The job of a municipal property tax assessor has become increasingly complex and subject to more frequent legal challenges and judicial scrutiny. An assessor must have a solid working knowledge of the law governing tax assessing, appraisal expertise and good "people skills" in order to be successful both legally and politically.

The main focus of this manual is on the legal aspect of the assessor's job—the statutes and court decisions that govern the work of a municipal assessor. The Appendix materials include articles written by municipal assessors to provide practical advice regarding assessing and public relations which assessors may find helpful. This manual does not cover in depth the various assessment techniques that an assessor may use. For assistance in that regard, assessors should contact the very knowledgeable staff of the Maine Bureau of Revenue Services and consult the Bureau's publications.

This manual is intended to be used as a general guide and should not be used as a substitute for reading the relevant statute or court decision. It should not be construed as providing legal advice. For legal advice regarding a specific situation, assessors should consult the municipality's private attorney, in-house counsel or MMA Legal Services staff directly.

This edition and all previous editions of the MMA *Manual for Local Assessors* draw heavily from the text of the 1973 MMA *Assessors Manual* and is also based in part on portions of the course materials prepared by the Maine Bureau of Revenue Services for its "Basic Course 1" and "Basic Course 2" for assessors. Contributors to this and prior editions include: Rebecca Warren Seel, Esq.; James Katsiaficas, Esq.; William W. Livengood, Esq.; Ellerbe Cole, Esq.; Richard Flewelling, Esq.; Antoinette Mancusi, Technical Advisor, MMA; Geoffrey Herman; Peter Beckerman, Esq.; Sally Daggett, Esq.; Geoffrey Hole, Esq.; Cynthia Cole Michaud, CMA; Michael L. Austin, ASA, CAE, LREA, CMA; Winfeld S. Smyth, David Ledew, and Jeff Kendall, Bureau of Maine Revenue Services; Elizabeth Sawyer, CMA; Judith Mathiau, CMA; Kenneth Allen, CMA; David Morton, Town Manager; and William Cooper, Town Manager. We would like to thank Marks Printing House, Property Valuation Advisors, and Maine Coast Heritage Trust for granting permission to reproduce some of their materials. Thanks also to Patti Soule, Sally Joy and Christine Bragg of MMA's Central Services staff for their patience and hard work in typesetting and proofing this edition of the manual.

Terms and Abbreviations Used in this Manual

M.R.S.A. means the Maine Revised Statutes Annotated, the laws enacted by the Maine Legislature. An example of a reference to the Maine statutes is 30-A M.R.S.A. § 4401. The number "30-A" refers to Title 30-A. The number "§ 4401" refers to section 4401 of Title 30-A.

A.2d or **Me.** refers to the series of Maine Supreme Judicial Court ("Law Court") cases reported for this State and court region. "A.2d" means the Atlantic region reports, 2nd series. "Me." means the Maine reports. An example of a case cite is 111 Me. 119 (1913) or 459 A.2d 557 (Me. 1983). The numbers "111" and "459" refer to the volumes of the Maine and Atlantic court reports, respectively. The numbers "119" and "557" refer to the pages on which the cases begin. The number "1913" refers to the year of the court's decision. "(Me. 1983)" means that the case is a Maine case decided in 1983. More recent case cites include an additional provision: for example, 2000 ME 58, 678 A.2d 159. The "2000 ME 58" is a reference to the year of the court decision (2000), the decision number (58), and the state (ME).

Maine Rules of Civil Procedure means the rules governing non-criminal cases brought before the Superior Court. The rules cover such matters as who may be named as parties to a court action, the information that must be contained in a complaint, the issues that must be raised, time limits for filing certain court documents, and others. "Rule 80(B)" refers to a rule of civil procedure governing appeals from decisions made by local officials.

Et seq. means "and the following sections."

Legislative body means the town meeting or the town or city council.

Municipal officers means the selectpeople or the town or city council.

Tort means an injury to a person or a person's property that is the result of an action that is not a criminal act and that is not based on a contractual relationship.

Damages means money which must be paid to a person as compensation for personal injury or property loss.

Statutes are the laws passed by the Maine Legislature.

Ordinances are the laws passed by the legislative body of a town, city or plantation.

§ is the symbol meaning "section."

Supra means that the court case in question was previously cited in the text.

Note: Copies of the Maine statutes may be available at the town office or city hall. The statutes, court cases, and court rules of procedure also are available at the State Law Library, University of Maine law school library and possibly at the county courthouse. They are also available on the Internet through the State of Maine home page and through various law-related web sites. (See Appendix 7)

Chapter 1

Creation, Qualification, and Liability of Assessors

Creation, Qualification, and Liability of Assessors

Generally

The local property tax is the "life blood" of Maine municipalities. It is absolutely essential to the legal assessment and collection of property taxes that the municipality's tax assessor(s) be properly placed in office.

Before an assessor can make a valid assessment or take any other legal action, the assessor must be legally elected or appointed and sworn into office. A tax assessed by a "de facto" assessor (one who does not meet these requirements) is void and uncollectible, even if the assessor who is invalidly elected or appointed or is not sworn into office is only one member of a board of assessors. *Inhabitants of Springfield v. Butterfield,* 98 Me. 155, 56 A.581 (1903); *Inhabitants of Otisfield v. Scribner,* 129 Me. 311, 151 A.670 (1930).

The election, appointment, duties and conduct of assessors in towns and cities are governed by Titles 30-A and 36 of the Maine Revised Statutes Annotated. According to 30-A M.R.S.A. § 2526, a board of assessors in Maine cannot consist of fewer than three people, although cities and towns may choose to have a single assessor instead of a board. As a result of 30-A M.R.S.A. § 7006, which states that laws relating to election, appointment, qualification, duties, powers, compensation, liabilities and penalties for official neglect and misconduct of town officials apply to plantations and their officers except when otherwise provided, plantation assessors generally are governed by the same laws that apply to assessors in towns.

A few municipalities in Maine have been designated as "primary assessing areas." 36 M.R.S.A. § 303.

Establishing the Board or Single Assessor

In Cities. Unless the city charter provides otherwise, the assessors of cities and their assistants shall be chosen on the second Monday in March each year. Their term of office is one year from the election date, and they continue in office until a successor is chosen and qualified in their place. 30-A M.R.S.A. § 2552. *City of Bath v. Reed,* 78 Me. 276, 4 A.688 (1886); *State v. Weeks,* 67 Me. 60, 63 (1877). The municipal officers of a city may authorize the assessors to appoint additional assistant assessors in addition to the number of assistant assessors elected or appointed under the provisions of any city charter. However, the employment of those additional assistant assessors may not extend beyond the end of the municipal year during which they were appointed. 30-A M.R.S.A. § 2552.

Generally, the provisions of the city's charter govern the election and qualification of assessors of cities. Notwithstanding the provisions of any city charter to the contrary, a city council may by ordinance provide for a single assessor whose powers and duties shall be the same as for towns, and who shall be appointed for a term not exceeding five years. 30-A M.R.S.A. § 2552.

In Towns and Plantations. The following paragraphs address the number, method of selection, term and removal of assessors in towns and plantations.

** **Number.** In a town, if a separate board of assessors is established, it may consist of three, five or seven members, as the voters may decide. If a town fails to fix the number, three shall be elected. The voters in a town also may decide to have a single assessor, in which case he or she must be appointed by the municipal officers, rather than elected. Any vote of the legislative body determining whether to have a board of assessors or a single assessor must occur at least 90 days before the annual meeting. Also, if the town meeting is deciding this question or deciding to change the size or terms of office of a board of assessors, the total number of votes cast for and against must equal or exceed 10% of the number of votes cast in the town in the last gubernatorial election. 30-A M.R.S.A. § 2526(5)(A). If a board of assessors serving staggered terms exists and the town wants to change to a single assessor, it is the opinion of the MMA legal staff that this transition may occur legally without first allowing the members of the board to serve the remainder of their terms.

Section 2526(5) also provides that the municipal officers of any town, or the municipal officers of two or more towns acting jointly, have independent power to enact an ordinance providing for a single assessor for a term not to exceed five years. Seven days' notice of the meeting of the municipal officers at which such an ordinance will be adopted must be given and the notice must be given in the same manner as provided for town meetings. In towns where the town meeting is the legislative body, the ordinance becomes effective immediately after the next annual town meeting if the municipal officers enacted it at least 90 days before the annual town meeting. The ordinance remains in effect until revoked by a town meeting or by the municipal officers at least 90 days before an annual town meeting. 30-A M.R.S.A. § 2526(B). Sample ordinances and warrant articles for the establishment of a board of assessors or a single assessor are included in Appendix 1.

In a plantation, the board of assessors is always elected and consists of three members. 30-A M.R.S.A. § 7004. (Plantation assessors also function as the municipal officers and have the same duties as the selectpeople in a town. See MMA's *Municipal Officer's Manual* for a discussion of those duties.)

** **How Chosen.** If a town establishes the position of single assessor, that person is appointed by the municipal officers. 30-A M.R.S.A. § 2526(5)(A). If a town votes to

have a board of assessors, the town may elect them from the floor by a non-ballot method, or it may provide for them to be elected by written ballot at an open town meeting under 30-A M.R.S.A. § 2525 or by secret (Australian) ballot at the polling place under 30-A M.R.S.A. § 2528. Election in town meeting is by plurality in towns of more than 4,000 in population and by majority in towns with a population of 4,000 or under. 30-A M.R.S.A. § 2526(l). However, in towns using the secret ballot method of election, election is by plurality, regardless of population. 30-A M.R.S.A. § 2528(9).

If a municipality has not created a board of assessors or single assessor, and is not part of a primary assessing area, then the municipal officers shall be the assessors. 36 M.R.S.A. § 703. Where a town has created a board of assessors but has not elected a full board, the municipal officers shall serve and be sworn as the assessors. 30-A M.R.S.A. § 2526(5)(C).

** **Vacancies.** If a town has a separately elected board of assessors, with one or more seats scheduled for re-election, and no one is elected or willing to be sworn to fill one or more of those seats, then the board of selectpeople displaces the entire board of assessors and serves in both capacities under 30-A M.R.S.A. § 2526(5) and 36 M.R.S.A. § 703. *Inhabitants of Machiasport v. Small*, 77 Me. 109 (1885); *Inhabitants of Williamsburg v. Lord*, 51 Me. 599 (1863). However, if this happens and one or more of the selectpeople is unwilling to serve as an assessor, those selectpeople may resign as assessors and retain their status as selectpeople. Those vacancies on the board of assessors then may be filled by appointment by the selectpeople for the remainder of the term under 30-A M.R.S.A. § 2602. The displaced assessors could be returned to the board in this way, if the selectpeople so chose. In appointing people to fill the assessors' positions under this scenario, it is very important to clearly designate which selectperson's assessing office the newly appointed assessor is replacing, in order to keep track of which expired term the person is filling and when the new person's term of office will expire.

The language of § 2526(5)(C) does not expressly apply where a town elects a single board to serve as selectpersons/assessors (i.e., votes once for each "selectperson/ assessor" or "selectperson/assessor/overseer of the poor" seat to be filled). It therefore is arguable that a member of such a combined board could not resign one of the "hats" and continue to wear the other; a member unwilling to serve as assessor arguably would have to resign completely as selectperson/assessor, leaving a vacancy which could only be filled (if at all) by calling an election. 30-A M.R.S.A. § 2602. This issue sometimes arises where a member of a combined board is also elected as a State Legislator. The offices of municipal assessor and Legislator arguably are incompatible offices which cannot be held simultaneously. Some attorneys interpret State law as allowing a person to resign only his or her assessor's office while remaining in office as selectperson in order to avoid the incompatibility; they believe

that the offices of selectperson and assessor are legally separate under State law, even though a town may have combined them for purposes of election. Other attorneys view the language in § 2526(5)(D) as a recognition by the Legislature that when a town treats the offices as one for election purposes, a person must either hold both or resign both. Until the statute is amended or a Court rules on the question, there is no clear answer. When a person elected to serve on a combined board wants to resign only as assessor, the board should consult its attorney and consider seeking a declaratory judgment from the Superior Court in order to know for sure whether such a resignation would be legal.

Where a full board of assessors initially is in existence and a member then resigns, dies, moves or otherwise leaves the position, the selectpeople either may appoint someone to fill the vacancy for the balance of the term or may leave it vacant. 30-A M.R.S.A. § 2602. If they decide to leave the position vacant and then receive a voter petition asking that they schedule an election to fill the vacancy, they must honor the petition only if the position involved is on a combined board of selectpeople/assessors, and only if the petition otherwise is valid. 30-A M.R.S.A. § 2526(5)(C); *Googins v. Gilpatrick,* 123 Me. 23 (1932).

** **Term.** Towns may fix the term of office of the assessors. Towns electing three or more assessors may provide for staggered terms, with one or more members to be elected each year. If the town fails to fix the terms, the term of each assessor shall be one year. The term of a single assessor cannot exceed five years. 30-A M.R.S.A. § 2526(5)(A) and § 2526(5)(B).

** **Holdover.** It is important to keep track of when the term of an elected or appointed assessor is due to expire, so that the necessary steps can be taken to hold an election, reappoint the assessor, or appoint a new assessor, as the case may be. While there is a legal theory called "holdover" or "de facto official" which is used to give other officials legal authority to act in the interim between the expiration of their existing term and their reelection or reappointment, it is not a theory that applies to assessors. *Inhabitants of Springfield v. Butterfield,* 98 Me. 155, 156, 56 A.581 (1903); *Inhabitants of Otisfield v. Scribner,* 129 Me. 311, 151 A.670 (1930). Avoid challenges to a tax commitment by an assessor who is "de facto" or "holding over" by anticipating the expiration of terms and having someone properly elected or appointed to serve once the existing term expires.

** **Removal.** An appointed single assessor may be removed by the municipal officers for cause after notice and hearing. 30-A M.R.S.A. § 2601. Elected assessors generally may not be removed by either the municipal officers or the voters before the expiration of their term, absent a recall procedure established by charter or ordinance.

∗∗ **Choice of Chairperson.** A town may, if it elects a board of assessors, designate one member as chairperson of the board. If no person is designated, the board shall elect by ballot a chairperson from its own membership before assuming the duties of office. Where no member receives a majority vote, the town clerk shall determine the chairperson by lot (e.g., by drawing straws). 30-A M.R.S.A. § 2526(5)(D).

Due to either misconception or misunderstanding, in many cases the chairperson of the board believes that he or she can dictate the actions of the board or act independently, without board approval. This is not true. The chairperson supervises the conduct of meetings, but has no more legal authority regarding assessments or other matters than the other members. The board can act only by action of at least a majority of the full board at a meeting that was preceded by appropriate public notice.

∗∗ **When County Commissioners May Appoint.** The statutes provide that the county commissioners may appoint local assessors in the following cases:

Plantations. In plantations that are not part of a primary assessing area, where the initial assessors do not make and return the valuation required by 30-A M.R.S.A. § 7008 or § 7009 at the time specified, the county commissioners may appoint assessors as provided in 30-A M.R.S.A. § 7010.

Towns. In towns that are not a part of a primary assessing area, if for three months after the issuance of a state or county tax warrant the assessors either have not been elected or have neglected to assess and certify such taxes, the county commissioners may appoint assessors as provided in 36 M.R.S.A. § 705.

Eligibility/Incompatible Offices

Eligibility. To be eligible to hold the office of assessor, a person must be at least 18 years of age, a resident of the State of Maine, and a United States citizen. A person serving as both an assessor and a selectperson also must be a registered voter in the town in which he or she is elected. 30-A M.R.S.A. § 2526. Plantation assessors must also be registered voters. 30-A M.R.S.A. § 7006.

Incompatible Offices. A person serving as assessor may not hold another office which is "incompatible." Two offices are incompatible if the duties of each are so inconsistent or conflicting that one person holding both would not be able to perform the duties of each with undivided loyalty. *Howard v. Harrington,* 114 Me. 443, 96 A.769 (1916); McQuillin, *Municipal Corporations* (3rd ed. rev.), § 12.67.

Some offices are deemed to be incompatible by statute: town manager and assessor (30-A M.R.S.A. § 2632); assessor and tax collector or treasurer (30-A M.R.S.A. § 2526); assessor and county commissioner (30-A M.R.S.A. § 52).

A court might find that other offices are incompatible with the assessor's office. An example of a possible incompatibility is the office of assessor and school administrative district trustee, because the SAD trustees issue an assessment warrant to the assessors from member municipalities covering a municipality's share of the total assessment needed to fund the SAD budget. Another possible incompatibility is that of local assessor and State legislator. (See the Advisory Opinion issued by the Office of the Maine Attorney General, February 1, 1971.) (See also the related discussion regarding "Vacancies" earlier in this chapter.)

Since the assessor's function is so important to the municipality's ability to collect tax revenue with which to operate, it is best for an assessor to avoid holding any other office where there is any doubt about whether the two are incompatible. If a court finds that a person is holding two incompatible offices, it will rule that the person may continue to hold only the second office to which he or she was sworn. In at least one court decision, taxes levied by a board of assessors were held to be uncollectible where a former tax collector who had not settled with the town was a member of the board. *Otisfield v. Scribner,* 129 Me. 311, 151 A.670 (1930).

For the purposes of the rule of incompatibility, an "office" is a municipal government position which requires an oath before a person may legally perform any duties. Consequently, the fact that an assessor may operate a real estate business in his or her spare time would not be governed by the incompatibility test. That type of problem should be regulated by an ordinance or personnel policy dealing with conflicts of interest or outside employment.

Oath of Office

All assessors of cities, towns and plantations must be sworn to office at the beginning of each of their terms, regardless of when or by whom they are elected or appointed. 30-A M.R.S.A. § 2526(9). County commissioner-appointed assessors who replace negligent initial plantation assessors must be sworn. 30-A M.R.S.A. § 7010. An assessor chosen at a special meeting to fill a vacancy must be sworn. 30-A M.R.S.A. § 2526(9) Moreover, they must be sworn as assessors. *Bowler v. Brown*, 84 Me. 376, 24 A.879 (1892). Where the selectpeople act as assessors, each must be sworn both as a selectperson and as an assessor; otherwise an assessment made by them would be void. *Inhabitants of Dresden v. Goud,* 75 Me. 298 (1883); 36 M.R.S.A. § 703. An assessment made by a board of assessors, any one of whom is not sworn, is void and uncollectible. *Springfield v. Butterfield,* 98 Me. 155, 56 A.581 (1903).

Assessors elected at an annual town meeting may be sworn in open town meeting. 30-A M.R.S.A. § 2526(9). If not so sworn, they shall be summoned through the clerk by a constable to appear and take the oath of office. 30-A M.R.S.A. §§ 2526(9), 2602.

Assessors may be sworn by the moderator in an open town meeting, or after the town meeting by the town clerk or by any person authorized by law to administer oaths (including notaries public). 30-A M.R.S.A. § 2526(9). But if assessors take the oath before a person not authorized by law to administer it, a tax assessed by them is illegal. *Inhabitants of Orneville v. Palmer,* 79 Me. 472, 10 A.451 (1887).

While there are court decisions (*Gould v. Monroe,* 61 Me. 544 (1869); *Patterson v. Creighton,* 42 Me. 367 (1856)) which appear to hold that a less comprehensive oath would be sufficient for assessors, it is recommended that the following form be used in all cases:

> I,…do swear that I will faithfully discharge all the duties incumbent upon me as Assessor of…according to the Constitution and laws of Maine and that I will support the Constitution of the United States and of this State. So help me God." (Maine Constitution, Article IX, section 1)

However, when a person's religious beliefs prohibit him or her from taking an oath, that person may "affirm" rather than "swear" to do the things promised in the oath. 1 M.R.S.A. § 72(14). The last line of the oath ("So help me God") may also be deleted where necessary to reflect a person's beliefs.

Unless the oath is administered in the presence of the clerk, the person who administers it must give the person being sworn a certificate which he or she then must file with the clerk. The certificate must state the name of the person being sworn, the office involved, the name of the person who administered the oath, and the date when the oath was taken. 30-A M.R.S.A. § 2526(9). (See Appendix 1 for a sample form.)

The Maine Supreme Judicial Court has held in at least one case that it is not necessary that the records of a plantation show before whom the assessors qualified, as 30-A M.R.S.A. § 2526(9) appears to require. *Inhabitants of Sandy River Plantation v. Lewis*, 109 Me. 472, 84 A.995 (1912). However, it is advisable to comply with the statute if possible to avoid a legal issue. The court also held in that case that the record of the election of the assessors of a plantation at the annual meeting in one year was valid even though the record was not made until almost a year later.

The names of plantation assessors, together with a certification that they have been sworn, must be sent by the plantation clerk to the Secretary of State before September 1 of each year. 30-A M.R.S.A. § 7005.

Compensation and Withholding Issues

"Reasonable" Compensation and Actual Expenses. Municipalities must pay their assessors "a reasonable compensation and actual expenses incurred in complying" with the requirements of the property tax laws. They also must pay their assessors a reasonable compensation and actual expenses incurred in attending meetings and schools called by the State Tax Assessor. 36 M.R.S.A. § 206.

If a town fails to set the compensation of its assessors at its annual meeting, they must be paid $10 each per day for every day they actually perform necessary assessing work for the town. 30-A M.R.S.A. § 2526(5)(E).

Employment Status for IRS Purposes. An individual who is elected or appointed to serve in a municipal office which is created by and governed by State law will normally be treated as a municipal employee for the purposes of income tax and Social Security withholding. This would include the office of assessor, even if the person who is appointed to serve as assessor has a private assessing business and contracts with a number of municipalities to be their assessor. However, MMA's Legal Services Department is aware of at least one assessor who was deemed by the IRS to be an independent contractor and not an employee of the towns with whom the assessor had contracted. Any assessor who wants a ruling on his or her status for tax withholding purposes may file a request with the IRS on form "SS-8," which is available on the IRS website: http://www.irs.gov.

Federal and State Minimum Wage Law. Elected officials are exempt from minimum wage and overtime requirements under both the federal Fair Labor Standards Act (29 U.S.C. § 201 et seq) and Maine law (26 M.R.S.A. § 664(3)(D)). This exemption includes elected assessors. Appointed assessors are also exempt if, based on their job descriptions, they fall within one of four exempt categories under the Fair Labor Standards Act; those categories are executive, administrative, professional, and outside sales personnel. The Fair Labor Standards Act outlines the factors which must be met in order to fall within one of these exempt categories. The "administrative" exemption is the one which most likely applies to appointed assessors, but not all appointed assessors will automatically qualify for an exemption. In order to avoid significant penalties for misclassification of an appointed assessor as an exempt employee, it is advisable to consult with the U.S. Department of Labor or the municipality's attorney in making a decision about whether an exemption applies.

Certification Requirement/Assessor's Agent or Assistant

Municipalities may elect or appoint part-time assessors who are not certified by the State as having a minimum level of assessing skills. If a municipality appoints a full-time

professional assessor, however, that person must be certified as a professionally trained assessor by Maine Revenue Services. A municipality also may contract with an assessing firm to provide assessing services. Maine Revenue Services has a list of certified assessors ("Certified Maine Assessors" or "C.M.A.'s") and assessing firms recognized by the State as being professionally qualified. 36 M.R.S.A. § 327.

If an elected board of non-certified assessors contracts with or employs an assessing firm or an assessors' assistant or agent to perform most or all of the work which will provide the basis for the property valuations in a given year, the legal obligation to ensure that property values are calculated according to just value rests with the elected assessors, because they are legally the assessors for the municipality. The same is true for a professional assessor who contracts with a firm for assistance. Local assessors must keep themselves informed as to the assessment techniques used by the professionals they hire and must use their own knowledge of local conditions to check the accuracy of a professional's recommendations. *Shawmut Inn v. Inhabitants of Town of Kennebunkport,* 428 A.2d 384 (Me. 1981). (See Appendix 7 for a list of *Maine Townsman* articles which includes a February 1994 article discussing the use of assessing agents or shared assessors by various municipalities. See also MMA's *Interlocal Agreement Manual*.)

Liability of Assessors

Tort Claims Act. As a general rule, assessors will be immune from liability for damages if a taxpayer claims that he or she has been injured by a decision of the assessor(s). This is because the work and decisions performed by assessors generally constitute "discretionary" or "quasi-judicial" acts for the purposes of the Maine Tort Claims Act. 14 M.R.S.A. § 8111. *Powers v. Inhabitants of Sanford,* 39 Me. 183 (1855); *Trim v. Inhabitants of Charleston,* 41 Me. 504 (1856); *Patterson v. Creighton,* 42 Me. 367 (1856); *Ware v. Percival,* 61 Me. 391 (1872); *Rowe v. Friend,* 90 Me. 241, 38 A.95 (1897). To the extent that an assessor is not immune from liability for a negligent or intentional act that is within the scope of his or her authority, the municipality must provide insurance, self-insure, or appropriate the money necessary to pay for the legal defense costs of an assessor and for any judgment which may be awarded against the assessor. 14 M.R.S.A. §§ 8104-D, 8112, 8116. For example, if a local assessor were involved in a car accident while doing assessing fieldwork and was driving a municipally-owned vehicle, the municipality would have to pay the assessor's legal defense costs and any claim awarded against the assessor based on the assessor's negligent operation of the vehicle. However, if the assessor were driving his or her personal vehicle, 14 M.R.S.A. § 8112(9) requires that the vehicle owner's insurance policy be used first to pay the claim; if insufficient, then the municipality must pay any excess. An assessor who acts beyond the scope of his or her legal authority may be personally liable for any actions which result in an injury to a person or property. 36 M.R.S.A. § 702; *Mosher v. Robie,* 11 Me. 135 (1834); *Herriman v. Stowers,* 43 Me. 497 (1857); *Allen v. Archer,* 49 Me. 346 (1860). The Maine Tort Claims Act caps the

liability of the municipality at $400,000 (or to the extent of insurance coverage if greater) and of the governmental employee at $10,000.

Civil Rights Act of 1871. The federal Civil Rights Act of 1871 (42 U.S.C. § 1983) prohibits any violation of any right which is guaranteed to individuals by either the U.S. Constitution or a federal statute. An assessor generally will be immune from personal liability for damages under this law if the assessor acted in good faith. "Good faith" means that the assessor did not know and could not reasonably have known that his or her decision would deprive the injured person of a federal or constitutional right. If an assessor voted to increase a person's valuation or to deny an abatement on the basis of the person's race, religion or ethnic background, that assessor would be personally liable for damages under federal law for violating the person's civil rights. There is no cap on the amount of liability of the municipality and of the individual employees for claims under the federal Civil Rights Act, and if the party bringing the action prevails on any of the claims, he or she is entitled to attorney's fees and costs as well as to any damages.

Right to Know Law. Title 1 M.R.S.A. § 401 et seq. (the "Freedom of Access" or "Right to Know" Law) guarantees public access to the public records and proceedings of the assessors as defined in the law. This law will be discussed in more detail in Chapter 9. If an assessor willfully violates the requirements of the Right to Know Law, the municipality is subject to a fine of up to $500.

Record Retention Laws. Title 5 M.R.S.A. §§ 95-A and 95-B require all municipal officials to protect and preserve public records within their custody and control and to retain them to the extent required by the rules of the State Archives Advisory Board. Failure to comply with these laws could result in possible criminal penalties against the assessor. For a copy of the rules of the Archives Advisory Board, contact the State Archives in the Office of the Secretary of State or access them on the Internet. (See Appendix 7 for the address, phone number, and website address.)

Miscellaneous Fines. An assessor who refuses to assess a State, county or municipal tax required by law, or who willfully omits or fails to perform any duty imposed upon him or her by law, may be punished by a fine of not more than $100. 36 M.R.S.A. § 704. In addition, any municipal official who neglects or refuses to perform a duty of office commits a civil violation for which he or she can be fined up to $100, where no other penalty is provided. 30-A M.R.S.A. § 2607.

Liability of Municipality

Failure of First Assessors. Where assessors are appointed by the county commissioners on failure of the initial assessors of incorporated towns and plantations to return the valuations, they are to be paid from the county treasury and the sums are to be

apportioned to the town or plantation and collected and paid into the treasury in the same manner as county taxes. 30-A M.R.S.A. § 7010.

Failure to Assess Fines. If assessors fail to assess a fine imposed on a town after certification from the clerk of the court, the court may issue a warrant for its collection in the same manner as the Treasurer of State may do for the collection of a State tax. 23 M.R.S.A. § 3706. (This fine is one that could be imposed upon a town under 23 M.R.S.A. § 3701 where the town failed to repair a defective railroad crossing for which it was responsible.)

Where a fine is imposed against a town for neglect to open ways or to keep them in repair and the fine is certified to the assessors by the clerk of the court, if the assessors neglect to make the assessment and the defective way is not acceptably repaired within four months after notice of the fine, the court may issue a warrant to collect from the town the fine and costs or the unpaid portion. 23 M.R.S.A. § 3707.

Failure to Assess. When the county commissioners appoint assessors for a municipality because of a delinquent county or State tax, those assessors shall not only assess upon the estate of the municipality its due proportion of State and county taxes, but also such reasonable charges for time and expense in making the assessment as the county commissioners may approve. 36 M.R.S.A. § 705.

Failure to File Municipal Valuation Return. Title 36 M.R.S.A. § 383 requires assessors to complete and return a "Municipal Valuation Return" form by November 1st or within 30 days of the date of commitment, whichever is later. The penalty for late filing is $50 for the first day and $10 for each day thereafter for municipalities of 2,000 or less. For municipalities over 2,000 in population, the penalty is $100 for the first late day and $20 for each additional day. The penalty is deducted from the tree growth, veterans' exemption, and homestead exemption reimbursement due that municipality from the State, in that order of priority.

Miscellaneous Duties of Assessors and Related Penalties

Meetings with State Tax Assessor. The State Tax Assessor exercises "general supervision over the administration of the assessment and taxation laws of the State, and over local assessors…in the performance of their duties, to the end that all properties shall be assessed at just value…in compliance with the laws of the State." 36 M.R.S.A. § 201.

If summonsed, assessors must appear before the State Tax Assessor or his or her agent and answer under oath any questions asked by the State Tax Assessor, or produce for examination any books, records, papers or documents in their custody or control relating to any matter which Maine Revenue Services may have authority to investigate or

determine. For failure to comply with a proper summons of the State Tax Assessor, or for refusal to testify when so summoned, assessors may be fined as for contempt of court. 36 M.R.S.A. § 112.

If the State Tax Assessor reports any violation of the State tax laws to the assessors, they must reassess any or all property in the town if so ordered. Failure to comply constitutes willful neglect of duty. 36 M.R.S.A. § 384.

See *Young v. Johnson*, 161 Me. 64 (1965) for additional analysis of the authority of the State Tax Assessor under these statutes.

Militia. Whenever the Governor decides that it is necessary, the assessors shall enroll with the militia each non-exempt citizen of the municipality who is a Maine resident and who is more than 18 years old and less than 45 years old. The Governor must establish rules governing the process for enrollment. Any assessor neglecting or refusing to perform this duty or committing fraud in preparing the rolls is guilty of a Class E crime. 37-B M.R.S.A. § 225.

Public Reserved Lots. When a township is created and certain portions are reserved for public uses and the boundaries of those portions are not located prior to the incorporation of the township into a town, the assessors of the incorporated town may apply to the Superior Court of the county to appoint three persons to locate the reserved portion. 12 M.R.S.A. § 583.

Chapter 2

Assessment—General Requirements and Process

Assessment—General Requirements and Process

Assessors are public officials whose principal duties are to ascertain and list all taxable property within their municipality, to value taxable property according to its "just value," and to assess each taxpayer his or her fair proportion of State, county, and municipal taxes. The only way in which this tax burden can be fairly distributed is for the assessors to attempt to discover all taxable property within their municipality and to value all property fairly. When a property value is too high, the owner is helping to pay the taxes of others; if it is too low, the owner is getting a "free ride" to some extent.

Power to Tax; Attempts to Limit Local Taxing Authority

Municipal assessors may only assess taxes that are authorized by State law. A municipality has no authority to establish a tax by a vote of its legislative body. Any delegation of the power to tax by the Maine Legislature to municipalities must be clear and unambiguous. Maine Constitution, Article 1, § 22; *Hefflefinger, Inc. d/b/a Thrifty of Portland v. City of Portland*, 1999 ME 153, 739 A.2d 844, *citing City of Auburn v. Paul*, 110 Me. 192, 85 A.571, 575 (1912).

Likewise, a municipality has no authority to adopt an article, ordinance, or charter provision which attempts to set a limit on the tax rate ("mill rate") which the assessor may apply in calculating individual property tax obligations. Nor may a municipality establish rules governing the assessment methodology used by an assessor or the value which will be assigned to property. 36 M.R.S.A. §§ 708, 701-A, 710; Maine Constitution, Article IX §§ 7,8.

Legal Status of Assessors

Although local tax assessors are chosen by the municipality, the Maine Supreme Court has held repeatedly that an assessor acts as an agent of the State in performing his or her assessment duties. Those duties are imposed by State law and cannot be altered by a vote of the local legislative body or municipal officers. *Frankfort v. Waldo Lumber Co.,* 128 Me. 1, 3, 145 A.241 (1929); *City of Rockland v. Farnsworth,* 93 Me. 178, 183, 44 A.681 (1899); *McKay Radio and Telegraph Co. v. Inhabitants of Town of Cushing,* 131 Me. 333, 335, 162 A.783 (1932); *Inhabitants of Town of Milo v. Milo Water Co.,* 131 Me. 372, 377, 163 A.163 (1932); *Frank v. Assessors of Skowhegan,* 329 A.2d 167 (Me. 1974). See also 36 M.R.S.A. § 701.

Assessment Forms

State law requires the State Tax Assessor to prescribe the form of blanks, reports, abstracts and other records relating to the assessment of property for taxation. Assessors

must use and follow the forms as prescribed. The State Tax Assessor has the power to enforce their use. 36 M.R.S.A. § 205.

Basic Assessment Requirements/Method of Assessment

Date Determining Taxable Status; Inventory of all Property; Valuation and Assessment. State law requires that assessors determine as nearly as possible the nature, amount and value of the real and personal property within their jurisdiction that is subject to property taxation as of April 1 and estimate and record separately the value of land, exclusive of buildings, of each parcel of real estate. 36 M.R.S.A. §§ 502, 708. In other words, they must make an "inventory" of all taxable property within the municipality (as well as certain non-taxable property, which is discussed in Chapter 7). This "inventory" is also sometimes called an "invoice." They also must make a "valuation" of that taxable property. On the basis of this "inventory" and "valuation," the assessors must assess against the owners of all taxable property all municipal taxes and their due proportion of any State or county tax. 36 M.R.S.A. § 709. This is the actual "assessment." The assessment does not need to be made on April 1 or completed by that day. It is the question of whether a person or property is taxable which must be determined as of that date, as well as the value of the property. *Egery v. Woodard,* 56 Me. 45, 46 (1868); *State v. Waterville Savings Bank*, 68 Me. 515 (1878). Even if the property is sold on April 2 or a building burns to the ground on April 2, the assessment still is based on the ownership or use and condition on April 1. The only exception to this rule is equipment brought into the State for the first time after April 1. 36 M.R.S.A. § 611. (See Chapter 6 for further discussion of § 611).

Proration of Taxes. The "tax year" runs from April 1 to March 31. 36 M.R.S.A. § 502. Confusion sometimes arises because the tax year generally does not coincide with the fiscal (budget) year of the municipality. Where property is being sold and the buyer and seller want to prorate the taxes, 36 M.R.S.A. § 558 states that, unless an agreement between the parties specifies otherwise, the parties should prorate the taxes based on the fiscal year of the municipality in which the property is located. However, this is a private matter between buyer and seller; the municipality is concerned only about who owned the property on April 1.

Commitment. After computing the individual taxes, the assessors must make a perfect list of their assessments (i.e., the individual taxes) and commit this list to the collector together with a warrant giving the collector authority to act. 36 M.R.S.A. § 709. The list which is given to the collector is usually called the "tax list" or "commitment book."

General Valuation; Physical Inspection. The Maine Constitution requires assessors to make a "general valuation" of their municipality at least once every ten years. Maine Constitution, Art. IX, § 7. *State v. Hamlin,* 86 Me. 495, 501-503; *City of Auburn v. Paul,*

84 Me. 212, 215 (1892). They are required to do a physical inspection of real and personal property at least every four years. 36 M.R.S.A. § 328(7).

Equal Apportionment; Just Value. In assessing taxes on real and personal property, assessors are required to "apportion and assess them equally" (i.e., assess them at a relatively uniform rate with comparable property in the district) according to the "just value" (fair market value) of the property in question. Maine Constitution, Art. IX, § 8; *Chase v. Town of Machiasport,* 1998 ME 260, 721 A.2d 636. Title 36 M.R.S.A. § 701-A instructs assessors as to the definition of "just value." A more detailed discussion of "just value" appears later in this chapter.

Discretion to Choose Method of Assessment. The Maine Supreme Judicial Court has held that, in general, "local assessors have considerable leeway in choosing the method or combinations of methods to achieve just valuations." *Central Maine Power Co. v. Town of Moscow,* 649 A.2d 320, 324 (Me. 1994). For guidance on what methodologies are most appropriate for a particular type of property, assessors should consult with Maine Revenue Services. (See also Chapters 5 and 6 and Appendices 2 and 7 of this manual.)

Inventory of Taxable Property

The inventory of taxable property is the most important record prepared by the assessors, because it is the basis for making assessments. The assessors must make an inventory each year, but the methods they should use in obtaining the information are not addressed in the State statutes.

There are two ways in which this information can be obtained. One is by encouraging taxpayers to file lists of their taxable property. The other is by personal visits by the assessors to seek out and appraise taxable property. Of the two methods, the assessors' field visit is much more important, especially for commercial and industrial taxpayers. The filing of lists by taxpayers can assist the assessors to some extent, but it cannot take the place of personal inspection of property by the assessors. However, even if the assessors perform a personal inspection, the taxpayer still must furnish his or her list of taxable property when requested to do so by the assessors. 36 M.R.S.A. § 706.

Taxpayer List ("Section 706" or "Doomsday" Notice). The following discussion outlines some of the rules governing how and when an assessor may solicit information from a taxpayer regarding his or her taxable property:

** **Method of Giving Notice; Effect of Notice.** Before making an assessment, 36 M.R.S.A. § 706 states that the assessors may give "seasonable notice" in writing to all persons liable to taxation in the municipality, asking them to provide the assessors with "true and perfect lists" of all the taxable real and personal property which they possessed on April 1st of that year (sometimes called the "Doomsday Notice," a reference to the

book kept by William the Conqueror in 11th century England listing taxable land). *Perry v. Inhabitants of Lincolnville*, 149 Me. 173, 99 A.2d 294 (1953). The giving of such notice by the assessors either to resident or non-resident owners is not required in order to have a valid assessment. *City of Rockland v. Farnsworth*, 111 Me. 315, 89 A.65 (1913). The notice may be mailed to the last known address of the taxpayer or may be provided by any other method that provides reasonable notice to the taxpayer. However, if the assessors do give direct notice and a taxpayer fails to submit his or her list of taxable property, the taxpayer may be barred from requesting an abatement later on unless the taxpayer provides a list with his abatement application and satisfies the assessors that he or she was unable to furnish it by the original deadline. Delivery of this notice to the taxpayer should be substantially verifiable (e.g., certified mail or hand delivery) in order to increase the municipality's chances of successfully blocking a taxpayer's appeal for failure to submit a true and perfect list of property. If the assessors fail to give direct notice to a taxpayer, the taxpayer is not barred from requesting an abatement as long as he or she provides information in writing regarding the nature, situation and value of his or her taxable property upon the request of the assessors.

** **Deadline for Giving Notice and Submission of List.** No time is fixed by law for giving such notices or within which the lists must be furnished to the assessors. The notice itself should specify when lists are to be presented. All that the law requires is that the notice be "seasonable" and that the request be "reasonable." The notice should be given before the first of April, and should call for presentation of the lists by some specific date after April 1. Lists should be considered as filed on time if mailed to the proper person with the correct postage and postmarked on or before the day of the deadline. 36 M.R.S.A. § 153.

Although it appears to be a common practice for towns to require the lists to be submitted on or before April 1st, this practice lends itself to inaccuracy by the taxpayer and resulting errors by the assessors. How can a taxpayer say with certainty what taxable property he or she owned as of April 1st if the list must be returned before that date? Requiring the list to be filed by a later date in April (e.g., April l5th) would provide more accurate information.

In some municipalities, the assessors have a tradition of meeting on April 1 to receive taxpayer lists. However, no State law requires this.

** **Form of Notice.** No particular form is required for this notice. A sample appears in Appendix 2.

** **Swearing to Truth of List; Request for Additional Information.** The assessors may require the person furnishing the list to swear to its truth. The oath may be administered by any of the assessors. They also may require the taxpayer to provide

additional information ("to answer in writing all proper inquiries as to the nature, situation and value" of the taxpayer's property that is taxable in Maine). A refusal or neglect to answer such inquiries and swear to their accuracy also will bar an appeal. The list and answers furnished by the taxpayer are not binding upon the assessors. 36 M.R.S.A. § 706. However, the Maine Supreme Judicial Court has held that the taxpayer's list is binding on the taxpayer and refused to allow a later denial of the listing by the taxpayer to be the basis for an abatement. The court applied the theory of estoppel against the taxpayer. *Dead River Co. v. Assessors of Houlton,* 149 Me. 349, 103 A.2d 123 (1953).

See Chapter 10 for a more thorough discussion of "true and perfect lists" and of recent cases interpreting § 706 in the context of abatement and appellate proceedings.

Inspection of Property. Personal inspection of real and personal property on an annual basis is not required by law, but it is obviously the best method of determining the "nature, amount, and value" of taxable property. Failure to conduct a personal inspection will not in itself invalidate an assessment, but it is likely to lead to injustice and abatement requests.

A physical inspection and inventory of real and personal property is required at least every four years. 36 M.R.S.A. § 328(7). Where possible, any necessary field work should be done by all of the assessors as a group, so that the results will reflect the combined judgment of the board. Sometimes this work is done by dividing the town into as many sections as there are assessors, with one assessor canvassing each section. While this division of labor may seem a more efficient method, it could lead to unequal assessments among various areas of the town (and therefore illegal assessments). If it is impossible for the entire board to attend a field inspection, the board must meet to review the findings of the individual assessors who do the field work and to vote as a board to approve the final inventory and valuation. Strictly speaking, in making their field inspections, assessors should give as much attention to personal property as to real estate; in reality, most assessors focus their efforts on real property.

Whenever a majority of the board meets to transact business affecting any or all citizens, such as when a majority of the board of assessors meets to inspect properties or to discuss valuations, their meeting is a public proceeding that requires public notice, and the public has a right to attend. 1 M.R.S.A. §§ 401-410, the Freedom of Access (or "Right to Know") Law. (See Chapter 9 for a discussion of this law.)

Field Cards and Field Books. In order to keep a record of what they find on a field inspection, most assessors use either "field books" or "field cards." Cards generally are preferable, since they are easier to handle and to rearrange after the field work is done. One of these forms is made out for each taxpayer. Each form is large enough so that it can be used for a number of years (usually five years). Examples are located in Appendix

2 of this manual. The card should contain blanks for the various categories of property, arranged in the same order as in the valuation book. Information from the valuation book for the previous year should be transferred to the field card in the first year the card is used; then each subsequent year's information is added directly to the card until it is filled up. This will enable the assessors to have a recent valuation history of a particular piece of property in the field merely by glancing over the card.

Assessors should not rely completely on the previous year's inventory for their information as to taxable property to the exclusion of determining the facts for themselves. However, if the record for the previous year is available at the time the field inspection is made, the likelihood of omitting property from the inventory is reduced.
It should be emphasized that these field cards and books, whether purchased from a printing house or made up to suit the preference of a particular assessor or board of assessors, are merely working records. They are necessary in order to arrive at an accurate assessment, but they do not take the place of the "inventory" which must be included in the regular valuation book. They are the work sheets on which the record is based. Since no form is prescribed, each assessor or board is free to devise whatever form will be most useful. Whatever form is used should itemize the property in the same categories as are found in the valuation book, to aid in transferring the information into that book. Maine Revenue Services strongly recommends that the several categories and code references adopted conform with the classifications and items required to be reported on the annual Municipal Valuation Return. (See sample in Appendix 2.)

Permission to Inspect Property. Most assessors enter land and inspect structures from the exterior without the express permission of the owner or occupant. Taxpayers seldom complain about such inspections, although legally the taxpayer could challenge an entry and exterior inspection made without permission as a trespass or invasion of privacy. When an assessor needs to do an interior inspection, every effort should be made to ask the owner or occupant for permission. If the owner or occupant is unavailable or actively refuses permission, the assessor has two choices: (1) consult with an attorney about obtaining an inspection order from the court or (2) estimate the nature and value of the property based on whatever limited observations the assessor may be able to make from the outside or from the road. The same is true when the owner or occupant refuses to allow the assessor to enter the property at all.

Just Value Defined

Maine Constitution. The Maine Constitution (Art. IX, § 8) requires all taxes upon real and personal property to be apportioned and assessed equally according to the "just value" of the property.

Statutory Definition. Title 36 M.R.S.A. § 701-A of the Maine statutes provides the following definition of "just value."

> In the assessment of property, assessors in determining just value are to define this term in a manner that recognizes only that value arising from presently possible land use alternatives to which the particular parcel of land being valued may be put. In determining just value, assessors must consider all relevant factors, including, without limitation, the effect upon value of any enforceable restrictions to which the use of the land may be subjected, current use, physical depreciation, sales in the secondary market, functional obsolescence, and economic obsolescence. Restrictions include but are not limited to zoning restrictions limiting the use of land, subdivision restrictions and any recorded contractual provisions limiting the use of lands. The just value of land is deemed to arise from and is attributable to legally permissible use or uses only.
>
> For the purpose of establishing the valuation of unimproved acreage in excess of an improved house lot, contiguous parcels and parcels divided by a road, powerline or right-of-way may be valued as one parcel when: each parcel is five or more acres; the owner gives written consent to the assessor to value the parcels as one parcel; and the owner certifies that the parcels are not held for sale and are not subdivision lots.

Court Cases Interpreting "Just Value." The Maine Supreme Judicial Court has held on numerous occasions that "just value" means "fair market value." *Weekley v. Town of Scarborough,* 676 A.2d 932 (Me. 1996), *citing Alfred J. Sweet, Inc. v. City of Auburn,* 134 Me. 28, 31 (Me. 1935); *Town of Southwest Harbor v. Harwood,* 2000 ME 213, 763 A.2d 115, *citing McCullough v. Town of Sanford,* 687 A.2d 629, 631 (Me. 1996). "Fair" means that the value is nondiscriminatory and "just" means that it is in line with the fair market value of the property. *Yusem v. Town of Raymond,* 2001 ME 61, 769 A.2d 834, *citing Chase v. Town of Machiasport,* 1998 ME 260, 721 A.2d 636, 640. "The sale price of property is evidence of market value, which is used in determining property value for tax assessment purposes." *Wesson v. Town of Bremen,* 667 A.2d 596 (Me. 1995). "Market value is the price a willing buyer would pay a willing seller at a fair public sale…in a free and open market." *Shawmut Inn v. Inhabitants of Town of Kennebunkport,* 428 A.2d 384 (Me. 1981). "Evidence of what the property sold for in a bona fide sale is most significant…. An actual sale very near to the time at which the value is to be fixed is of 'great weight,' as contrasted with mere opinion evidence." *Weekley v. Town of Scarborough, supra*, *citing Arnold v. Maine State Highway Commission,* 283 A.2d 655, 658 (Me. 1971). While a recent public sale is evidence of market value, the weight to be given such a sale depends upon whether the sale price was indicative of price on the free and open market. "An actual sale…shows what is paid, not what is the exact value. A sale may represent sentimental value or value as an investment, possible future value, or it may represent use, location, or any one or more of many things." *Shawmut Inn v. Inhabitants of Town of Kennebunkport,* 428 A.2d 384 (Me. 1981). The fact that a sale is made directly to an abutter, to someone who already lives in the neighborhood, or to a

family member rather than on the open market, the personal medical and financial problems of the seller that may have prompted the decision to sell the property, or the presence of a defective structure on the property which made it less desirable are all factors which an assessor could consider in determining whether an actual sale price was indicative of the fair market value of the property. *Weekley v. Town of Scarborough, supra,* at 935 (dissenting opinion), *citing Shawmut Inn, supra*; *Town of Southwest Harbor v. Harwood, supra*. In various decisions the court has noted that "(a)ny conscious failure to exercise a fair and impartial judgment, or a conscious resort to arbitrary methods, different from those employed in assessing other property of like character and situation, thereby resulting in imposing an unequal burden on property having the same just value will invalidate the assessment." *Farrelly v. Inhabitants of Town of Deer Isle,* 407 A.2d 302 (Me. 1979); *Kittery Electric Light Co. v. Assessors of Town of Kittery,* 219 A.2d 728 (Me. 1966); *City of Biddeford v. Adams,* 1999 ME 49, 727 A.2d 346. For other cases interpreting the meaning of "just value," see *Central Maine Power Co. v. Town of Turner,* 128 Me. 486 (1930); *Sears Roebuck and Co. v. Inhabitants of City of Presque Isle,* 150 Me. 181 (1954); *Cumberland County Power and Light Co, v. Hiram,* 125 Me. 138 (1926); *Statler Industries, Inc. v. Town of Manchester,* CV-85-207 (Me. Super. Ct., Kenn. Cty., May 20, 1986); *South Portland Associates v. City of South Portland,* 550 A.2d 363 (Me. 1988); *Moser v. Town of Phippsburg,* 553 A.2d 1249 (Me. 1989).

Importance of Methodology. While it is important to be as accurate as possible in the value assigned to a piece of property, it is just as important to be sure that the method used to assess is equitable and not discriminatory. Valuations will not be equitable unless they are all based initially on fair market value.

Real Estate Boom Effect on Valuation. In the wake of the real estate boom and bust of the 1980s and the more recent real estate boom of the 1990s, it may be instructive to note a comment made by the Maine Supreme Judicial Court in a case decided in 1935. The court observed that

> (a)ssessors are not…obliged to follow the fleeting, speculative fancy of the moment; they should recognize that the true value of a fixed asset such as real estate is fairly constant and must be gauged by conditions not temporary and extraordinary, but by those which over a period of time will be regarded as measurably stable…. Violent fluctuations in municipal income are not desirable, and assessors in listing value may to a certain extent, disregard the excesses of a boom, as well as the despair of a depression. *Alfred J. Sweet, Inc. v. City of Auburn,* 134 Me. 28, 32, 180 A.803 (1935).

Basic Methodology for Determining Value. The simplest method of determining the just value of all property within the municipality is by classifying the property into a few well-defined categories, by establishing unit values for each of those categories based on

studies of reliable sales and construction costs, and then by applying such unit values to all similarly situated properties. This method can be used with a minimum of records and a minimum of technical knowledge; yet, it will produce an improved assessment. Moreover, it will enable the assessors to explain to dissatisfied taxpayers why their particular valuation was fixed at a certain amount.

The first step toward valuing property fairly throughout the municipality is to list all taxable property accurately. For the purposes of accurate valuation, assessors will need a more detailed description of certain property than they need to include in the valuation book. For example, in the case of farmlands, the assessors should know how many acres of a farm are crop land, how many pasture, and so on. In the case of buildings, the assessors should have information as to size and condition. Intelligent use of standard factors will enable assessors to obtain equitable valuations. In valuing property on the basis of this information, certain unit values may be used. For example, a unit value per acre may be set for the various classes of land—such as crop land or pasture land—and a unit value based on the floor area may be set for buildings.

See Chapters 5 and 6 and Appendix 7 for additional discussion of methodology.

Comparison Necessary to Check Consistency and Uniformity. Regardless of the method used to arrive at the individual values, some method of comparison must be used to check them for consistency and uniformity. Comparison can be used to good advantage not only for buildings, but also for land, since each property or parcel, while different to some extent, has certain features which are the same as others, although in different combinations. In practically all instances, an assessor is familiar with the value of his or her own property. Therefore, assessors should begin their yearly task by appraising their own buildings, land and personal property. When this has been accomplished, the assessor has the basis upon which to assess the property of the other residents in the municipality, with which he or she is familiar to a lesser extent. The elements of value which should be compared are: age and condition; adaptability to profitable use; size; accessibility; attractiveness to a typical owner; type and quality of heating plant; lighting; plumbing; water and telephone service; type of roads; and proximity to schools, churches, stores and businesses. A true and honest, impartial assessment by the assessors of their own property will result in a similar and equitable assessment of the entire community, provided all other properties are assessed on the same basis.

Market Data Study; Assessment-Sales Ratio Studies. A study of all the market data available in each municipality is essential since, by analyzing it, the quality of the assessment can be shown conclusively; not only how the assessed value compares to fair market value (assessment ratio), but also what the likely spread is in valuations by location and dollar value (assessment quality). (For further discussion, see “Minimum Assessing Standards” later in this chapter.)

An analysis of sales might show that most parcels in each neighborhood are assessed equitably but that there is wide variance in the assessments between neighborhoods. Such an analysis also might show that cheaper properties are consistently assessed proportionately higher than more expensive places. Only by such analysis can the assessor find out how good or how bad the assessments are. If the assessor finds that the assessments are bad, it is his or her responsibility to correct the inequalities. If they are localized because of area changes, those areas should be reviewed. If widespread variations appear, a revaluation is in order.

On request, Maine Revenue Services provides the assessors of each municipality with copies of the assessment-sales ratio studies that are made annually for State Valuation purposes. These studies indicate the average assessment ratio and usually differentiate between specific kinds of properties or even properties in different neighborhoods, when such data is available. This general information can be valuable as a beginning; thereafter the assessor can develop a sales data analysis which will give him or her the specific information needed. The field staff of Maine Revenue Services is available to assist assessors with this.

Constant Review; Equalization. Even the most equitable valuation program inevitably starts to deteriorate as soon as completed. Values do not remain constant, and the rate of change varies for different kinds and classes of property. The value of land, buildings, and personal property is constantly changing, but seldom, if ever, to the same degree, even in the same municipality.

Good assessment administration requires constant study and intelligent interpretation of sales data to identify the areas affected, the kind of property concerned, the extent of change, and the underlying reasons for it. Maintaining the quality of equalization obtained as a result of introducing systematized, technical methods and practices, as well as correcting errors or omissions that may be found, becomes fully as important as the need for the initial equalization program. Once these facts are realized, corresponding changes in the assessed valuations of all property affected are necessary if the assessment is to retain its original degree of equalization.

Failure to equalize assessments among the several categories of properties when it is known that they are assessed on different levels of value might well lead to assessment difficulties, including court action. Disproportionate assessments of this kind are discriminatory and violate the "just value" provisions of the Constitution. Assessors should remember that they must publicly record the ratio or percentage of current just value upon which their assessment is based.

See discussions later in this chapter regarding "Partial Revaluation" and "Interim Valuation Adjustments." (See Appendix 7 for a list of *Maine Townsman* articles related to the effects of the economy on assessing.)

Valuation Book and Record, Tax Maps, and Property Cards

Contents of Valuation Book. After compiling a list of taxable property by means of inspections and taxpayers' lists, and having valued the taxable property, the assessors must transfer this information to the "valuation book." Each separate parcel of real estate must be described in the valuation book, and the value of the land and of the buildings must be entered separately. 36 M.R.S.A. § 708. Taxable personal property should be listed under the appropriate heading of personal property. The combined total of both real and personal property, the personal property tax and the real estate tax, together with the total tax assessed against the individual taxpayer, should be entered for each taxpayer. Separate personal property and real property tax books may be used to constitute the valuation book provided the assessment certificate refers to each. In addition to all this, the valuation book must contain a record of certain exempt properties. 36 M.R.S.A. § 707. For a detailed discussion of the content and preparation of the valuation book, see Maine Revenue Services Bulletin No. 15.

Signing the Book. The valuation book must be signed by at least a majority of the assessors. *Belfast Savings Bank v. Kennebec Land and Lumber Co.,* 73 Me. 404 (1882). The court has held on several occasions that "(t)he signing of a warrant to the collector is not sufficient. The list of assessments must also be signed." *Belfast Savings Bank, supra*, at 406; *Colby v. Russell,* 3 Me. 227 (1824); *Foxcroft v. Nevens,* 4 Me. 72 (1826); *Johnson v. Goodridge,* 15 Me. 29 (1838); *City of Bangor v. Lancey,* 21 Me. 472 (1842). It is immaterial on what part of the tax lists the names of the assessors appear if signed in such manner as to show their intention to give them their official sanction. *Johnson v. Goodridge,* 15 Me. 29 (1838). The tax list may be the one retained by the assessors or it may be another committed to the collector. *Cassidy v. Aroostook Hotels, Inc.,* 134 Me. 341, 344, 186 A.665 (1936). Maine Revenue Services provides all the necessary forms to accomplish this task. The approval and signing of the valuation book by a board of assessors must be done by majority vote at a meeting held in accordance with the Maine Freedom of Access Law. (See Chapter 9 for a discussion.)

Filing. State law requires the assessors to file the original or a copy of the valuation book in the assessors' office or with the clerk before the taxes are committed to the tax collector. 36 M.R.S.A. §§ 708 and 711. Any place where the assessors usually meet to transact business and keep their papers or books may be considered their office. Failure to file the record will not invalidate the assessment provided the municipality is able to prove that the assessments were legally made under the hands of the assessors by other legal evidence. In one Maine Supreme Judicial Court case, the court held that a list of the assessments annexed to and incorporated with a commitment to the collector, signed by the assessors, is competent evidence to prove an assessment was made under the hands of the assessors. But the court noted that the assessors had been negligent in their duties by not filing the record and expressed concern about relying on "the tattered book that goes the rounds with the collector" to prove the validity of the town's assessments. *Inhabitants*

of Norridgewock v. Walker, 71 Me. 181 (1880). In another case, the court held that, where a forfeiture of land is claimed for non-payment of taxes, it must appear that the assessors made the proper record of the assessment of the tax, as provided by statute, or committed to the collector a list of the assessments comprising an assessment of a tax upon the land. *Baker v. Webber,* 102 Me. 414, 67 A.144 (1907). In short, it is best to comply with the statutory filing requirement.

Tax Maps

Tax maps, although not legally required, are essential tools for assessors in the assessment of real property. 36 M.R.S.A. § 328. A tax map is a map drawn to scale showing lot lines and/or property lines, dimensions, and numbers, letters or names to identify each delineated lot or parcel. Assessors working without tax maps are likely to miss entire parcels or to assess fewer acres than the parcel actually contains. Maine Revenue Services has developed specifications to guide municipalities in designing a tax mapping program. (See Bulletin No. 4). Once a series of maps has been prepared, the assessors must be diligent in their efforts to keep the maps updated. Otherwise, their usefulness will quickly diminish.

Property Cards

Property cards also are an indispensable part of the assessment and valuation process. Assessors need property cards arranged geographically so that they can easily and intelligently compare neighboring properties, as well as those in other neighborhoods. There should be a card for each separately assessed parcel of land. Ordinarily this card can describe the land as to type, quality and quantity and should note other factors affecting value, such as neighborhood, accessibility, utilities, services and topography. It also will contain data adequately describing buildings with respect to the value factors. (If there is more than a single major building, an additional property card will be needed for each extra one. These extra cards should be referenced to the card describing the land.) All elements of value affecting the property should be noted and considered.

These cards are neither the field cards referenced earlier nor the assessment records. However, if they are arranged alphabetically, the valuation book (the assessment record) can be written directly. An assessor's office should have two sets of card files—one, the building record, arranged geographically which will be in detail, and the other arranged alphabetically, from which the book can be written. Set up in this manner, the cards serve as a cross-index to each other as well as to map references and locations. These cards should not be removed from the office except when reviewing a neighborhood, at which time all the cards making up that neighborhood should be taken from the file and studied in the field.

One of the real advantages of preparing and using property cards is that a particular valuation can be explained more readily to any taxpayer. Many of the complaints made by taxpayers are due to the taxpayers' as well as the assessors' unfamiliarity with the basis on which the valuation is made. If assessors value property by pure guesswork, or by copying the figures from a previous valuation, it is difficult to explain satisfactorily the reason for a particular value. A second advantage is that once a set of property cards has been prepared for all the property in the municipality, keeping them up-to-date should be routine. Additions and improvements in property from year-to-year, as well as changes resulting in a lower value, can easily be noted. This should result in more accurate assessment as well as a saving of time and effort. A sample card appears in Appendix 2. (The need for two card files is eliminated with a computer-generated list and inventory of properties.)

The purpose of a card record is twofold: first, to provide an inventory and description of the property; and second, to have a record of the computations, including the final assessed value which is transferred to the valuation book as the assessment. Remember that a card record, no matter how good or how complete, does not eliminate the need for the valuation book. The inventory in the valuation book is necessary in order to have a valid assessment; the card record which is described above does not take the place of the inventory which is required by law to be included in the valuation book. (See Appendix 7 for a list of *Maine Townsman* articles, one of which discusses how one municipality updated its property cards.)

Deadline for Completing Assessments

Maine statutes contain no specific provisions as to when assessors must begin the work of making the assessment. The court has held that inquiry made by assessors on June 10 concerning property which a person had on the taxing date (i.e., April 1) was not too late to charge him with a tax. *Powell v. City of Old Town,* 108 Me. 532, 81 A.1068 (1911). However, 36 M.R.S.A. § 705 requires the assessors to assess and certify State and county taxes within three months after the warrant for a State or county tax is issued. In addition, the State Tax Assessor can require assessors to provide, at certain times, information relating to assessments, which also can affect the time for completing the assessment. Towns and plantations are authorized to determine at their annual meetings when the commitment shall be made by the assessors to the collector. 36 M.R.S.A. § 505(l). This would necessarily require that the assessors complete the assessment in time for the commitment to be made within the time prescribed. (See a related discussion regarding the commitment date in Chapter 3.) City governments, likewise, may set a commitment date at the time the tax levy for the year is made. *City of Rockland v. Rockland Water Co.,* 82 Me. 188, 19 A.163 (1834). Obviously, the sooner the assessments can be completed and the taxes committed, the sooner people will pay their taxes, providing cash for the municipality to use and reducing the need for tax anticipation borrowing.

Tax Rate

Before the valuation book can be completed, the assessors must fix the tax rate and compute the individual taxes. This is the actual assessment. The local tax rate is determined by dividing the total amount to be raised from property taxes by the total taxable valuation of the municipality. The total amount to be raised from property taxes includes municipal appropriations, school district taxes (if any), and the county tax, minus allowable deductions, such as State Municipal Revenue Sharing. Forms are available from Maine Revenue Services to use in calculating the tax rate. (See Appendix 2 for an example.) The Maine Revenue Services staff also will assist assessors in completing the form.

A simple example follows:

Add County Tax	$ 433,000.00
and Municipal Appropriations	+6,250,000.00
	$6,683,000.00
Subtract Revenue Sharing	- 201,000.00
Total to be raised from property taxes	$6,482,000.00

Divide the total to be raised by the total valuation of $189,000,000.00 = .03429. The actual rate necessary to raise the required money is just over 34 mills. A 35 mill tax rate would generate the needed taxes plus a legitimate overlay (see below).

When taxpayers complain about the tax rate and their total tax bill, the assessor(s) may want to remind the taxpayer that it is not the value assigned to the person's property alone that dictates the tax to be paid. The budget approved by the local legislative body is a big factor in whether taxes in general are high or low.

Assessment of Overlay

The assessors, or municipal officers in a primary assessing area, may include in the total assessment an amount not exceeding 5% of the total assessment (including State and county taxes) and certify that fact to their municipal treasurer. *Lord v. Parker,* 83 Me. 530, 22 A.392 (1891); 36 M.R.S.A. § 710. This is called "overlay." The purpose of "overlay" is to make it possible for the assessors to "round off" and avoid dealing with fractions. The assessors are supposed to use the minimum amount of overlay necessary. Overlay is not intended to be used to build up surplus revenues. If the assessors assess an overlay exceeding 5 percent, even though the excess is only a few cents, the whole tax is void, and the assessors can be sued by any one whose goods have been distrained for the tax. *Huse v. Merriam,* 2 Me. 375 (1823); *Mosher v. Robie,* 11 Me. 135 (1834). Some municipalities appropriate money "from overlay" for a specific account or purpose (e.g.,

to pay abatements). If this has not been done, any excess generated through overlay will go into unappropriated surplus.

Illegal Assessments

The assessment of a tax by a municipality is illegal unless the sum assessed is raised by vote of the legislative body at a meeting legally called and notified. 36 M.R.S.A. § 503. Such an illegal assessment may be perpetually enjoined. *Carleton v. Newman,* 77 Me. 408 (1885)*; City of Rockland v. Farnsworth,* 86 Me. 533, 30 A. 68 (1894). According to 36 M.R.S.A. § 504, if money not raised for a legal purpose is assessed with other money legally raised, the assessment is not void, nor is the assessment void because of an error, mistake or omission by the assessors, tax collector or treasurer. However, any person paying such a tax may sue the municipality in Superior Court to recover the sum not raised for a legal purpose with 25 percent interest and costs and any damages which he or she has sustained by reason of mistakes, error or omission of the assessors. For the purpose of this statute, "error" does not include an error in judgment made by the assessors regarding the value of property. *Stickney v. City of Bangor,* 30 Me. 404 (1849).

Minimum Assessing Standards

Title 36 M.R.S.A. § 327 requires all assessors to achieve a minimum assessment ratio of 70% and a maximum assessment quality rating of 20. Section 327 also prohibits municipalities from having an assessment ratio at an amount greater than 110% of its just value. In addition, if a municipality with private property classified under the Tree Growth Tax Law fails to achieve the minimum assessment ratio established under 36 M.R.S.A. § 327, it will lose 10% of its Tree Growth reimbursement from the State for each percentage point that the minimum ratio falls below the statutory minimum (currently 70%).

The "assessment ratio" (also known as the "certified ratio" or "adjusted ratio") means the percentage of full fair market value at which the assessors are assessing taxable property. The assessors must certify this ratio annually on the Municipal Valuation Return. The "assessment quality" (or "quality rating") indicates what the likely spread is in valuations by location and dollar value. It is defined in Maine Revenue Services rules of procedure for developing State valuation (Chapter 201) as "a ratio study statistic which is calculated by dividing the 'average deviation' by the 'average ratio'." The "average deviation" is defined by Maine Revenue Services as "a ratio study statistic which is calculated by adding together all deviations of all the samples in a ratio study and dividing that sum by the total number of samples in the ratio study." The "average ratio" is defined by Maine Revenue Services as "a ratio study statistic which is calculated after arranging validated arms length transactions in ascending ratio order, then summing the sales ratios of the samples in the central seventy percent of the study group and dividing that sum by the

number of samples contained in that central section. Fifteen percent of the samples from each tail of the study group are omitted in computing the average ratios to decrease adverse effects which frequently occur when outlier ratios are not excluded."

If a municipality fails to achieve these standards, Maine Revenue Services is authorized to order that one or more of the administrative practices outlined in 36 M.R.S.A. §§ 328 and 329 be undertaken by the municipality. Those practices include using aerial photos, tax maps, and electronic data processing, conducting sales ratio studies, hiring additional appraisers, and performing a physical inspection and inventory. See generally, 36 M.R.S.A. §§ 201, 384.

Section 328 expressly states that assessors must conduct sales ratio studies annually. It also requires that assessors perform a physical inspection and inventory of each parcel of land and each personal property account at least every four years.

Contracts Between a Taxpayer and the Municipality Regarding Valuation and Assessment of Property Taxes for Specific Tax Years

In 1995 the Department of the Maine Attorney General issued an opinion regarding the legality of an agreement between the town of East Millinocket and Bowater Great Northern Paper Co. governing the valuation and assessment of BGNP's property. Based on the facts recited in the opinion, the Attorney General's Office found that the agreement was legal. For a copy of that opinion, see Appendix 2.

Revaluation

The Constitution of Maine, Art. IX, § 7, requires that assessors conduct a general valuation (i.e., a "revaluation") at least every ten years. Three methods that may be used in carrying out a revaluation are:

(1) Revaluation by the assessor and his or her staff.
(2) Revaluation by the assessor under the supervision of a consultant, using local help.
(3) Revaluation by a professional revaluation firm.

Revaluation by the assessor and his or her staff is the most difficult method for the assessor to handle and should not even be considered unless the assessor is well qualified by experience and training to handle all phases of the reassessment project. If the assessor is capable of handling much of the work of the revaluation but has not had the experience or training to develop necessary schedules and tables, the revaluation may be done under the direction of a consultant, who is usually an assessor experienced in revaluation work. However, since many assessors lack the time or the required training and experience to

undertake the monumental task of a general revaluation, the trend is to have it done by a professional firm.

Title 36 M.R.S.A. § 330 requires the State Tax Assessor to provide municipalities with assistance in selecting a professional revaluation firm, if so requested. Maine Revenue Services also is required to provide a model revaluation contract (see Bulletin No. 3). (See Appendix 7 for a list of *Maine Townsman* articles regarding revaluations.)

Regardless of the method used, the assessor is not relieved of any of his or her legal responsibilities by having other people involved with the revaluation. Therefore, the assessor should be careful to oversee and approve all operations of the revaluation program.

A town meeting does not have the authority to reject or modify valuations determined by the assessors or to take any action directing the assessors regarding valuations or manner of assessment. *Rockland v. Farnsworth,* 93 Me. 178, 183 (1899); *Maine Consolidated Power Co. v. Inhabitants of Town of Farmington,* 219 A.2d 748 (Me. 1966). The town meeting probably cannot even legally dictate that a revaluation be conducted by appropriating money for that purpose, although it may be politically unwise for the assessors to ignore such a town vote. In a situation where the town has hired an appraisal firm to assist in the revaluation, the municipal assessors are still the sole authority to determine the final valuation figures. By statute, "(a)ny revaluation is under the jurisdiction of the municipal assessors whose judgment, as opposed to that of any hired appraiser, is final." 30-A M.R.S.A § 5722(7). Once the assessors have determined valuation figures in compliance with statutory and constitutional standards, the statutory remedy for a disgruntled taxpayer is to make application for abatement. (See discussion in Chapter 10.)

Maine Revenue Services recommends the "cost" approach as the best assessment methodology for a revaluation. However, when that method is used initially, other methods should be used to test the reasonableness of values that seem questionable. *South Portland Associates v. City of South Portland,* 550 A.2d 363 (Me. 1988); *Quoddy Realty Corp. v. City of Eastport,* 1998 ME 14, 704 A.2d 407.

Partial Revaluation

Some assessors have attempted to implement a town-wide revaluation in stages, inspecting and inventorying one section of the municipality in a given year and adjusting the tax assessments in that section of the community only, without regard to the classes of property involved. Such a practice generally will violate the requirement in the Maine Constitution in Art. IX, § 8 that "(a)ll taxes upon real and personal estates shall be apportioned and assessed equally according to the just value thereof." This does not mean that property values cannot be adjusted each year to reflect changing market conditions,

but to be constitutional, those adjustments must be made for all property of a similar character and location. *Moser v. Town of Phippsburg,* 553 A.2d 1249 (Me. 1989); *City of Biddeford v. Adams,* 1999 ME 49, 727 A.2d 346 (discriminatory taxation where one residential neighborhood's assessments were reduced by a lesser percentage than another, similar neighborhood).

Factoring/Interim Valuation Adjustment

Factoring. Some assessors adjust the assessed values of all property in the municipality by a certain percentage (or certain percentages relative to certain types of property) in order to bring the municipality's assessment ratio into compliance with State assessment standards—a method known as "factoring." For example, assume that a town did a full revaluation in l995. The assessors have continued to assess new and existing properties according to the schedule of values used during the 1995 revaluation. In 2001, the assessors determine that the town's assessment ratio is approaching the 70% minimum assessment ratio required by § 327. The assessors determine that if an increase (a "factor") of 30% were applied to both the real and personal property, the town's overall municipal valuation would more accurately reflect the 2001 market value of all taxable property in the town. Therefore, for the 2001 tax year, the assessors increase all assessments by an across-the-board factor of 1.3. The problem is that while the assessors have avoided dropping below the minimum assessment ratio by using this across-the-board method, they have not addressed and, in fact, may have compounded, any underlying inequities in the assessment scheme that might have existed. (For a case discussing the use of a factor to adjust values on a neighborhood basis, see *City of Biddeford v. Adams, supra*.)

Interim Valuation Adjustment Based on Sales Ratio Study. A more sophisticated and far superior form of factoring is the "interim valuation adjustment." This is accomplished when the assessors perform a current sales ratio study before determining the factors to be applied to various types of property in the municipality. A "sales ratio" is nothing more than the assessed value of a property at the time of sale divided by the price paid for the property. When developing a sales ratio study, assessors only review so-called "good sales," which are conveyances of property between a willing buyer and a willing seller in an arm's length transaction. A well-done sales ratio study going back two or three years usually will reveal disparities between sales ratios (for example, between waterfront and non-waterfront properties). A sales ratio study also may reveal that the values of properties abutting the major lakes in town are increasing at different rates depending on the water body. It also frequently is the case that the real estate market has affected the value of condominium-type properties or commercial properties in a dramatically different way than residential real estate, and this is documented in a sales ratio study [*see Muirgen Properties, Inc. v. Town of Boothbay,* 663 A.2d 55 (Me. 1995) (condominium property found to be overvalued where condominiums not revalued to reflect decline in value of class of properties)]. After a current sales ratio study has been accomplished, the

assessors are able to apply different factors to segregated types of property in a way that accomplishes two goals: the town's assessment ratio is improved and equity within the overall assessment scheme is improved as well.

For an analysis of when constitutional problems can result from the use of a different percentage ratio for real and personal property, see *City of Westbrook v. S.D. Warren Co.,* CV-92-425 (Me. Super. Ct., Cum. Cty., Mar. 17, 1993). See Appendix 7 of this manual for a list of *Maine Townsman* articles, including several regarding "interim valuation adjustments," factoring, and the effects of the market and the economy on assessing.

Assessment of State and County Taxes

The assessors are required by law to assess upon the estates in their municipality their due proportion of any State or county tax, which shall be committed in the same manner as municipal taxes. 36 M.R.S.A. § 709.

State Taxes. When a State tax is ordered by the Legislature, the Treasurer of State shall send his warrants directed to the assessor of each municipality, as soon after the first day of April as is practicable, requiring them to assess upon the estates of the municipality its proportionate share of the State tax for the current year. 36 M.R.S.A. § 252. The Treasurer of State's warrant shall require the assessors of each municipality: (1) to make a fair list of their assessments, as required by Title 36 of the Maine Revised Statutes; (2) to commit such list to the tax collector of such municipality in accordance with the provisions of 36 M.R.S.A. § 709; and (3) to return a certificate thereof in accordance with the provisions of 36 M.R.S.A. § 712. 36 M.R.S.A. § 253. (This statute is still in effect, but is not used. There currently is no "State tax.")

County Taxes. When county taxes are ordered, the county commissioners issue their warrant to the assessors to assess and commit to the collector the municipality's share of the county tax. 30-A M.R.S.A. § 706. Interest on unpaid county taxes begins to accrue on the 60th day after the payment date set by the county commissioners at a rate set by them pursuant to 36 M.R.S.A. § 892-A.

Certificates to be Sent to Treasurer of State and County. When the assessor or municipal officers have assessed any State or county tax and committed it to the proper officer for collection, they must return to the appropriate treasurer a certificate thereof with the name of such officer. 36 M.R.S.A. § 712.

Failure to Assess State or County Tax. If for three months after any warrant for a State or county tax has been issued, a municipality has neglected to assess and certify that tax, the Treasurer of State or of the county may so notify the county commissioners.

On receipt of that notification, the county commissioners shall appoint three or more suitable persons in the county to be assessors for that municipality. New warrants shall be issued to the assessors which shall supersede the State and county warrants originally issued to the assessors of the delinquent municipality.

Assessors appointed by the county commissioners shall be duly sworn, shall be subject to the same duties and penalties as other assessors, and shall assess upon the estates of the municipality its due proportion of State and county taxes and such reasonable charges for time and expense in making the assessment as the county commissioners may approve. 36 M.R.S.A. § 705.

Assessment of Fines Imposed on Municipality

When a fine is imposed on a town pursuant to 23 M.R.S.A. §§ 3701-3704 (defect in a railroad crossing which the town is obligated to repair), the clerk of the court must certify that fact immediately to the assessors. The assessors must assess the amount of the fine as other town taxes, certify to the court clerk that the assessment has been made, and cause the amount to be collected by their collector, who shall pay the same to an agent appointed by the court at such time as the court orders. If not paid by that time, the clerk, on application of the agent, shall issue a warrant for its collection, as the Treasurer of State may do for the collection of a State tax. 23 M.R.S.A. § 3706.

Assessment for Damaged School Books

Upon notification from the school committee that a parent or guardian is delinquent in paying for damaged school books or appliances furnished by the school to the student, the assessors shall include the value of the article or articles lost, destroyed or injured in the next tax assessed to that person, to be collected as are other town taxes. 20-A M.R.S.A. § 6807.

Water District Assessment

If approved by a majority vote of the legislative body of the municipalities which constitute a water district created by a private and special act of the Legislature, 35-A M.R.S.A. § 6103 authorizes the water district trustees to levy an assessment against its member municipalities in the event of a default on a note, bond or other evidence of indebtedness by the district.

Special Assessments (Sewers, Streets, Nuisances)

General. A municipality does not have the legal authority to levy a tax or special assessment except where expressly provided by State law. A discussion of those laws follows.

Sewer Construction. Title 30-A M.R.S.A. §§ 3442 and 3444 authorize special assessments for sewer construction projects against property that is "benefited" by the project. These sections are only applicable in municipalities where the legislative body has voted to accept them. 30-A M.R.S.A. § 3441. The vote to adopt those statutes arguably can occur either before or after the sewer construction is completed.

The process outlined in §§ 3442 and 3444 is as follows:

* The municipal officers determine what lots are benefited and assess them in an amount authorized by § 3442. The statute does not define "benefited." This issue was the subject of *Concerned Taxpayers Coalition of Scarborough v. Town of Scarborough,* 576 A.2d 1368 (Me. 1990). The court found that "in measuring the special benefit, the town need not be restricted to the difference in fair market value before and after the improvement…. In order to support the assessment it is not necessary for the town to measure precisely the benefit to each piece of property or to calculate exactly how much of the improvement is for the public and how much is for the special benefit of those assessed. Under the statute…, it need only estimate the benefit."

* They file with the clerk the location of the sewer, a statement of the amount assessed and the name of the owners or others who will be assessed. It usually will be to the municipality's advantage to list the owner, since the owner has the most to lose if an assessment remains unpaid and goes to lien. Section 3442 provides guidance regarding the calculation of the amount assessed against benefited lots.

* The clerk records these assessments in a special book.

* Within 10 days after filing, the clerk (presumably) gives notice to the people assessed in the manner outlined in § 3442. Notice must include an "authentic" copy of the assessment (which probably means an attested copy) and an order signed by the clerk stating the time and place for a hearing on the assessments (presumably held by the municipal officers).

* The municipal officers may revise the assessments after the hearing and record them with the clerk.

* Presumably after the hearing held under § 3442, the municipal officers certify the assessments and file the list with the tax collector for collection.

* The municipal officers (presumably, but perhaps the collector—the law isn't clear) send written notice of the assessment to the people assessed.

* If the person hasn't paid within 30 days after notice is given, the municipal assessors then assess a special tax equal to the total unpaid assessment and charges upon the lots listed (presumably after receiving notice from the municipal officers or collector regarding unpaid balances). The assessor includes the special tax in the next annual tax commitment. Interest accrues at the delinquency rate on the unpaid portion of the assessment from the 30th day after written notice to the person assessed; presumably this means a tax bill-type notice from the collector following commitment.

* The municipal officers are authorized to adopt a general order which authorizes the assessor and tax collector to assess and collect the total assessment due from the person assessed on an installment basis over a period not exceeding ten years. After adopting the order, the municipal officers must negotiate with a particular landowner and agree on the amount of the annual installment payment and the number of years over which the payments will be spread. At the beginning of each year, the municipal officers file a certified list of installment payments due from all landowners for that year with the tax collector; the certification may be personally signed by the municipal officers or may be done by a facsimile stamp used with their permission by someone preparing and signing the list on their behalf. Although not required by the statute, it makes sense to file a copy of this list with the assessor also. The municipal officers (presumably) then send a written notice to each landowner stating the installment amount due, the rate of interest applicable, and the date on which interest will begin to accrue; a copy of this notice should be sent to the collector even though not required by statute. At this point no interest has accumulated on that installment. If the installment remains unpaid after 30 days from when the notice is sent, the assessors are then authorized to levy a special assessment for the amount of the principal amount of the installment due and commit it to the collector in the next annual warrant. (Although not required by the statute, it makes sense for the collector to notify the assessor formally in writing that the 30 days has expired and what amount remains unpaid and must be specially assessed.) At this point, interest will begin to accumulate from the date which is 30 days after the date on which the written notice was sent. The rate of interest for a particular installment is the same as the rate applicable to delinquent taxes for that year. If the installment payment and/or accrued interest remain unpaid, the collector then may use the normal property tax lien process to collect the amount outstanding. (See Appendix 3 for a sample certified list of installment payments due.)

The authority for levying each list of special assessments for sewer construction should be cited as "sewer assessments levied in accordance with the provisions of 30-A M.R.S.A. § 3444." The tax collector's certification should be attached to the commitment and specifically referenced.

Street Construction. The method outlined above for sewer construction assessments should be followed for street construction assessments made pursuant to 23 M.R.S.A. §§ 3601-3606.

Sewer Rates. Sewer user rates charged for the use of a municipal sewer system are governed by 30-A M.R.S.A. § 3406, 38 M.R.S.A. § 1208, and any applicable local ordinance or charter provisions, in the absence of a private and special act of the Legislature creating the entity that operates the system. The rates are not assessed by the assessors, in contrast to sewer construction assessments discussed above. They are established by and committed to the municipal treasurer for collection by the municipal officers. See Chapter 3 for a discussion of this commitment process and Appendix 3 for a sample form.

Dangerous Buildings; Malfunctioning Septic Systems. Special assessments also are authorized in connection with the removal or repair of a dangerous building and the replacement of a malfunctioning subsurface wastewater disposal system or other sewage disposal system. The authority and procedure for assessing and collecting these special taxes is found in 17 M.R.S.A. § 2853 and in 30-A M.R.S.A. §§ 3428 and 3444 respectively. Member municipalities should see MMA's website or call the Legal Services Department for a copy of information packets discussing these two laws, which include sample forms. (See Appendix 7 for addresses and phone number.)

Tax Increment Financing Districts ("TIFs"). Tax increment financing is an economic development tool that enables municipalities to help finance development with the added tax revenues that the development itself generates. A municipality designates a tax increment financing ("TIF") district and adopts a development program that must be approved by the Department of Economic and Community Development ("DECD"). The assessed value of new development in the TIF district is "captured," and the property taxes collected (the "tax increment") are used to pay for the development project costs. This may occur one of two ways: (1) the captured tax increment may be used by the municipality, either directly or through the payment of debt service, to finance public improvements that enhance the development (such as roads or sewers), or (2) the captured tax increment may be used to lower the cost of the development itself through direct payment to the developer under so-called "credit enhancement agreements." In either case, an added benefit of the TIF process is that the captured assessed value does not count toward the municipality's equalized value for purposes of State aid, revenue sharing or county taxes.

However, there are certain requirements with which a municipality must comply in order to designate a TIF district. At least 25% by area of the real property within a development district must be a blighted area, in need of rehabilitation, redevelopment or conservation work or must be suitable for industrial sites; no TIF may exceed 2% of the total land area of the municipality; all TIFs combined may not exceed 5% of that area; and the aggregate value of equalized taxable property in TIFs may not exceed 5% of the municipality's total value as of the April 1st preceding the date of designation of the TIF district. (Please note, however, that a 1997 amendment to the TIF statutes exempts from this limitation those districts where the project costs exceed $100 million, the taxpayer's property consists of one contiguous parcel and the value of the district exceeds 10% of the municipality's equalized assessed value.) (See 30-A M.R.S.A. §§ 5251-5261 for details.)

TIF districts are designated by the municipality's legislative body (town meeting or town or city council) after a public hearing before the legislative body or its designee. Notice of this hearing must be published in a newspaper of general circulation within the municipality at least 10 days before the hearing. Before designation of a district or of a development program, the legislative body "must consider whether the proposed district or program will make a contribution to the economic growth or well-being of the municipality or to the betterment of the health, welfare, or safety of the inhabitants of the municipality." Where an interested party presents substantial evidence at the public hearing that the proposed district or program will result in significant detriment to that party's existing business in the municipality, "the legislative body must consider such evidence" and also must consider whether the prospect of benefit to the municipality outweighs the alleged adverse impact.

Before designation of the TIF district, the Commissioner of Economic and Community Development shall review the proposal to determine compliance with the law and to identify any tax shifts occurring within the county in which the district will be designated. The TIF district designation becomes effective upon approval by the municipal legislative body and by the Commissioner. At the time of TIF district designation, the legislative body also is to adopt a development plan for the district. The acquisition, construction, and installation of all real and personal property improvements, buildings, structures, fixtures, and equipment within the district under the development plan must be complete within five years of the Commissioner's designation of the TIF district.

A municipality's powers in the implementation of a TIF district development program include the power to acquire property, land or easements pursuant to the development program and to exercise the power of eminent domain in the same manner as it may for community development programs under 30-A M.R.S.A. § 5205.

For a discussion of additional types of TIFs, a copy of the TIF statute and DECD rules, a *Maine Townsman* article analyzing TIFs as an ecomonic development tool, and sample

TIF policy guidelines adopted by the City of Portland and the Town of Sanford, see MMA's "Tax Increment Financing Information Packet" available to members by calling the Legal Services Department or on MMA's website. For several court cases analyzing different aspects of the TIF statute, see *Delogu v. State of Maine,* 1998 ME 246, 720 A.2d 1153, and *Old Orchard Beach Partners v. Town of Old Orchard Beach,* CV-96-500 (Me. Super. Ct., Yor. Cty., Jan. 13, 1999). See Appendix 2 for an example of property tax assessment and commitment documents which were prepared in connection with a tax increment financing district.

Capital Improvement Districts. Municipalities are authorized to establish capital improvement districts for the purpose of "fairly apportioning the costs of making necessary capital improvements among the owners of property in the capital improvement district and establishing the public elements of the capital improvement district as municipally-owned." The land area comprising the district is initially privately owned. The "improvements" which can be made using a capital improvement district include "road construction, drainage system development or the installation of sewer or drinking water infrastructure." Special assessments are authorized in the same manner as for sewer construction assessments. For more detail about the process, see 30-A M.R.S.A. §§ 5221-5225.

Other Special Assessments. The following is a list of some other special assessments authorized by statute in specific situations:

** repair or removal of a building constituting a fire hazard to other property or the public (25 M.R.S.A. § 2393)
** clearing bushes, weeds, worthless trees and grasses from the roadside when the owner of cultivated or mowing fields has failed to do so by October 1 (30-A M.R.S.A. § 3291
** certain costs incurred by the municipality in connection with spraying for browntail moths may be assessed as services charged by the municipal officers (not the assessors) against landowners who refused to consent to the spraying (30-A M.R.S.A. § 3406; 22 M.R.S.A. § 1444)
** costs of removing or altering a nonconforming structure or object in an airport zone where the owner has neglected or refused to comply with an order to do so (6 M.R.S.A. § 242)

Valuation Book. Special assessments are not part of the tax levy approved by the legislative body to fund the municipality's annual budget. They are not calculations made by an assessor on the basis of the inventory of property included in the valuation book, nor are they based on the "just value" of the property being specially assessed. Consequently, they probably should not be included in the valuation book. They should be listed in a separate book labeled "Special Assessments" with a separate page labeled for each type of special assessment (e.g., "Sewer Construction Assessments" or

"Dangerous Buildings"). Special assessments cannot be used to compute the overlay authorized by 36 M.R.S.A. § 710, nor can they be included in the "total assessment" figure for the purposes of calculating the local property tax rate (i.e., the "mill rate"). However, the total of special assessments must be included in the annual tax commitment warrant to the municipal tax collector. (See sample commitment form in Appendix 3.)

Tax Base Sharing

Title 30-A M.R.S.A. §§ 5751-5753 authorize two or more municipalities to enter into an agreement approved by their legislative bodies to share all or part of the commercial, industrial or residential assessed valuation located within their respective communities. Before becoming effective, the approved agreement must be filed with the clerk in each of the participating municipalities and with the Secretary of State.

The agreement must specify:

- a duration which must be at least five years;
- a description of the tax base that is to be shared, expressed in terms of type of property or location of property;
- the formula for sharing the property taxes generated through taxation of the valuation that is to be shared; and
- any other necessary and proper matters.

The shared valuation is assessed in the municipality in which the property is located. It is taxed at the rate applicable in that municipality. The tax assessed is collected by the municipality in which the property is located. The share of the tax specified in the agreement must be sent within 15 days after collection to the other municipality(ies) on the basis of the terms of the agreement.

A sample tax base sharing agreement used by the cities of Lewiston and Auburn is available by contacting MMA's Legal Services Department.

Municipal Valuation Return to Maine Revenue Services

The municipal assessors and the assessors of primary assessing areas must make and return lists, furnished by the State Tax Assessor, of such information as to the assessment of property and collection of taxes as may be needed in the work of the State Tax Assessor for that purpose, at such time as the State Tax Assessor may require. This form is known as the "Municipal Valuation Return." This information must include land values, exclusive of buildings and all other improvements, and the valuation of each and every class of property assessed, with the total valuation and percentage of taxation, together with a statement to the best of the assessors' knowledge and belief of the

certified assessment ratio, or percentage of current just value, upon which the assessment is based. It also must include itemized lists of property upon which the town has voted to affix a value for taxation purposes. 36 M.R.S.A. § 383. A computerized summary of all of this data for the entire state is available from Maine Revenue Services in bound form. This form must be returned to the State Tax Assessor by November 1, or 30 days after the commitment is completed, whichever is later. There is a penalty for late filing of the return and lists. (See Chapter 1 regarding the penalty for failure to meet the deadlines.)

Review by Maine Revenue Services (State Tax Assessor)

Title 36 M.R.S.A. § 384 outlines the following role for the State Tax Assessor in monitoring local assessment practices:

> diligently investigate all cases of concealment of property from taxation, of undervaluation, and of failure to assess taxable property;

> report all cases of concealment, undervalation and failure to assess to the municipality;

> direct the attorney general and county attorneys to institute appropriate legal action to enforce all laws relating to assessment and taxation of property and to the liability of individuals, corporate officers and public officials for neglecting or failing to comply with those laws;

> order reassessment where necessary to ensure that all classes of property are assessed in a municipality in compliance with the law;

> hire the necessary assistance at municipal expense to complete the reassessment, where the assessors fail to provide a satisfactory reassessment. (See *Young v. Johnson*, 161 Me. 64 (1965) for a discussion of the State Assessor's authority.)

Public Relations

Many assessors have found it helpful to have educational pamphlets for the public generally explaining the process of assessing and revaluation, the effect of municipal budget approval on the property tax rate, and how the property tax is used once collected. MMA has sample booklets and brochures prepared by a number of Maine municipalities and MMA's State and Federal Relations Department which can be copied and made available to local assessors who want to prepare something for their own municipality. Some of these are reproduced in Appendix 2. For other suggestions from experienced

assessors on how to deal with the public, see Appendix 7 for a list of *Maine Townsman* articles discussing this issue.

The following discussion of "Public Relations" was prepared by Cynthia Cole Michaud, CMA, and is reproduced here with her permission:

Knowledge & Training

In order to effectively deal with the public, one must have knowledge and training. Training in the specifics of the tasks for which one is responsible, and knowledge regarding the application of the law and the valuation process over which the Assessor has the authority to administer. Get training faithfully. When one has a job to perform that is as demanding as the assessment function, training is the only way to ensure you don't break the law and lose the trust of the taxpayer.

* Get regular training.
* Learn the requirements of the law.
* Understand your cost and grading schedules/valuation systems.
* Understand your mapping & photography systems.
* Learn all you can about your town.
* Do not allow your training and knowledge to "puff" you up. The Assessor is a public servant, not a public tyrant. The taxpayers are your supervisors—they trust you to perform the job for which you were hired or elected. Don't betray that trust.
* Be accurate in what you say and do so your taxpayers can depend on you to do what is right (as defined by the law). Don't get into a wrong thinking mode by deciding you make the rules—you don't. The legislature makes the rules; an Assessor just enforces them.

Your knowledge and training will provide taxpayers with a reason to have confidence in your skills.

Listening Skills

Listening skills are essential in the first step of any public relations effort. It may not be apparent, but every time (even at the local store) someone asks you a question or witnesses you "in action," they will be drawing conclusions about your abilities. Are you listening?

** Be an active listener. When someone has taken the time to come in to see you, take time to sit down with him or her and give them your full attention.
** Make eye contact.
** Engage them by stating your understanding of their complaint.

** Don't run ahead of them and be focusing on your answer before they have had a chance to finish the question (even if you do know the answer and don't want to waste time). Wait patiently until they finish.
** Be respectful. If a question is basic in nature, resist the temptation to show how much you know. In other words, don't have a smug smile on your face. People know when they are being patronized—and they don't appreciate it one bit.

By being a good listener, you will ensure that your taxpayers will be thankful to you for treating them with respect.

Honesty & Trust

As the Assessor, you are charged with the authority to administer the property tax equitably and fairly according to the law. You will start out on the right foot if information is conveyed with honesty and trustworthiness. Always be truthful and forthright and people will recognize it; do not be blunt or curt.

** If you don't know the answer to a question, say so, and offer to get back to the person. Don't fake it and don't let it go.
** Make sure the taxpayer understands your explanation. They may not like the answer, but they should understand it.
** Don't assume someone cannot understand the valuation system. If you have one, explain it. Your taxpayers will appreciate it. If you don't have an equitable system, get one as soon as possible.
** Always keep your word or tell the taxpayer, in advance, why you cannot. Every time a taxpayer leaves your office dissatisfied with your answer, one more crack in the foundation of trust appears. If the trust of the taxpayer is allowed to erode, trouble is soon to follow.

If the information isn't given to the taxpayer openly and honestly, they will find out and will resent your failure to tell them what they need to know.

Objectivity

By remaining objective in your duties, you will inspire taxpayers to come and ask about problems and questions, rather than avoiding issues. This is an important aspect of being an Assessor, as it impacts every facet of your duties.

** Be objective in all your considerations.
** Treat all people the same, giving preference to none. All people receive the same treatment. Be polite, courteous, even-handed and logical in performing the Assessor's required tasks.

** Use the valuation system the same way on all the properties within the jurisdiction. Apply the system equitably and apply your judgment in like manner. Do not use the valuation system to punish, reward or favor certain taxpayers. All property is valued by the same methodology.
** Do not allow a discussion or disagreement to become personal in nature. It doesn't matter who is sitting in the Assessor's chair, the complaints remain the same.
** Always reference the law, as the law is the yardstick an Assessor is required to use.

It is far better for a taxpayer to say the Assessor is tough and fair rather than talking around town that the Assessor is weak and has no backbone.

Communications

All of the above discussion relates to communication and ways to be effective. The following is a list of do's and don'ts to assist the Assessor in an effort to effect good public relations.

General
> Welcome letters.
> Survey questionnaires for sales.
> Survey questionnaires for special projects—like mapping or revaluation.
> Newsletters, educational pamphlets, videos, etc.
> Town or Annual Reports.
> Newspaper notification of meetings—advertise and communicate information taxpayers need to know.
> Be certain tax bills are clear and understandable.

Field Work
> Always introduce yourself while in the field listing property. A name tag or other identification is a source of reassurance to property owners. It is advisable to make certain an adult is at home before entering any property.
> Door hangers and calling cards should be left at the property for valuation update visits if no one was home at the time you reviewed the property.
> Valuation change notices should be sent after a review.

Letters
> Make certain letters are well written, precise and uncomplicated.
> Always return letters/responses in a timely manner.

Telephone
> Always speak in a respectful and professional voice.
> Always return phone calls; always return them promptly.

> When leaving a message, give your name, number and a time when you can be reached. If speaking to a recording device, speak slowly, identify yourself and the purpose of your call. Repeat your name and number at the end of the message.

Public appearances and speaking engagements

> Organize your notes and be completely familiar with your material.
> Use visual aids to enhance your presentation.
> Always cite your sources and give credit to others when appropriate.
> If you don't know the answer to the question, ask to get the person's name and contact information after the presentation so you can follow up with the necessary data; then do it.
> Have your handouts organized and correlated to your presentation.
> Rehearse your presentation until you are comfortable. Try to visit the place you will be giving the talk to familiarize yourself with the facility.
> Advise the organizers of the event of the equipment you will need.

Documentation—records as a public relations tool

When serving as a public official, in any capacity, it is your responsibility to protect the taxpayers as a whole. In other words, the rights of the many must be protected. It is important to document situations where the authority of the municipality may be challenged.

> Keep records of all assessments, applications for abatement, exemptions, etc..
> If you don't have a form specifically for a given situation, find out if another town has one.
> If a form isn't needed, then just write down a summary of the event in question.
> Keep a written record as events occur. Don't wait, then go back and try to create a record later.
> Always prepare records so that another person can come in and pick up where you have left off. Leave things well organized and documented, as if you were not coming back.

We are to be diligent in maintaining records to protect the town from frivolous actions brought against it. By keeping good records, we may be able to manage a situation to prevent it from getting out of control or causing an uproar in our town—thereby promoting good public relations.

In summary:

The following are essential aspects of an Assessor's public relations program. While one will not be able to control every aspect of public interaction with our respective offices, it is hoped this information will provide some necessary tools to help manage those efforts.

Knowledge and Training
Listening Skills
Honesty and Trust
Objectivity
Communications

By fulfilling your office to the best of your abilities, you provide the basis for the best public relations activity available to you.

(See Appendix 2 for samples of some of the forms and letters referenced above.)

Note Regarding Information Contained in this Chapter of the Manual

Some of the discussion in this chapter relating to preparation and/or use of property cards, tax maps, property inventory, valuation books, overlay, "just value" and tax rates is taken from or based on Maine Revenue Services' "Basic Course 2" manual (or its predecessor). Some of this material is reprinted verbatim from that manual; however, it does not appear with quotation marks in most cases.

Chapter 3

Commitment—Requirements and Process

Commitment—Requirements and Process

Commitment Warrant

The assessors must "assess upon the estates in their municipality all municipal taxes and their due proportion of any state or county tax," make accurate lists of the taxable property and persons to be taxed, and commit the list, when completed and signed by a majority of the assessors, to the tax collector of their municipality; if none, then to the sheriff or his deputy with a warrant signed by them in the form prescribed by the State Tax Assessor. 36 M.R.S.A. §§ 709, 709-A and 801; *Belfast Savings Bank v. Kennebec Land and Lumber Co*., 73 Me. 404 (1882); *Vigue v. Chapman*, 138 Me. 206, 24 A.2d 241 (1941). (See 36 M.R.S.A. § 753 and Appendix 3 of this Manual for a sample warrant form.) The tax lists should not include exempt property, even though exempt properties are listed in the valuation book. 36 M.R.S.A. § 707. The original commitment documents go to the collector and a copy is filed in the valuation book. 36 M.R.S.A. § 711. After assessing and committing the taxes to the collector, the assessors must provide a certificate to the treasurer indicating the name of the collector. 36 M.R.S.A. § 712. (See sample in Appendix 3.)

The proper commitment of taxes to the tax collector gives the collector legal authority to begin collecting tax payments. It also is crucial to the validity of any collection actions taken by the tax collector, such as the use of a property tax lien.

If a full board of assessors has been duly elected or appointed initially, the commitment is valid if the warrant is signed by at least a majority of the assessors, provided a majority of the board voted to approve the commitment at an advertised, public meeting. (See Chapter 9 of this manual for further discussion.) For example, where there are only three assessors, the commitment is valid even though signed by only two of the assessors. *Cassidy v. Aroostook Hotels*, 134 Me. 341, 186 A.665 (1936). If there was a full board initially and a member or members resigns or a vacancy is created by some other means, a majority of the full board may legally approve and sign the commitment. However, if there was not a full board initially or if less than a majority is remaining on the board, then no legal action may be taken until the board is legally constituted or a sufficient number of vacancies filled, as the case may be. If the tax lists are signed by only one of the three duly elected and qualified assessors, sale of property by the municipality for taxes is invalid because the lien is invalid. *Belfast Savings Bank, supra*; *Cassidy v. Aroostook Hotels, supra*. (For a discussion of filling vacancies on the board, see Chapter 1.)

Loss or Destruction

When a warrant for the collection of taxes has been lost or destroyed, the assessors may issue a new warrant, which shall have the same force as the original. 36 M.R.S.A. § 754.

Correction of Commitment Warrant

Title 5 M.R.S.A. § 95-B authorizes the correction of errors in municipal records. The definition of "municipal record" in that statute is broad enough to include tax commitments. *City of Belfast v. Hayford Block Co.,* 120 Me. 517, 115 A.282 (1921); *compare, Eastport Water Co. v. Inhabitants of Eastport*, 288 A.2d 718 (Me. 1972). For many types of errors in the commitment, it is arguable that the procedure for correcting those errors is the one outlined in 5 M.R.S.A. § 95-B rather than voiding the original commitment and preparing a new one or using the supplemental assessment process provided in 36 M.R.S.A. § 713 or the abatement process outlined in 36 M.R.S.A. § 841. (See discussion of supplemental assessments in Chapter 4 and abatements in Chapter 10.)

Under § 95-B, the assessors prepare and sign a new commitment warrant with the necessary corrections. The assessors then prepare, sign and date a notarized statement which describes the nature of the errors being corrected and the date of the original commitment. This should be attached to the new commitment and given to the tax collector. The assessors should keep copies of both of these and a copy of the original commitment warrant in the same place, as should the tax collector. A sample form to use in connection with this process is in Appendix 3. For the tax collector's purposes, the date of the original commitment should govern the tax lien process.

The correction procedure authorized by § 95-B may not be used where the "error" that the assessors want to correct is an undervaluation of someone's property that they did not detect before signing the commitment. It may be used to correct an error in addition or subtraction on the commitment form, the omission of a number from the form (such as State revenue sharing or an amount of money lawfully raised by the legislative body), or using an incorrect figure on the form (such as a figure which has a transposition, which was inaccurately copied from another form, or which was included twice by mistake). Such errors will result in tax bills which either ask for too much or too little money from a taxpayer. Once the assessors have corrected the commitment under oath pursuant to § 95-B, the tax collector may want to send supplemental bills with an explanation of the error in the original commitment. This will help avoid having a taxpayer pay too much or too little tax on the basis of the original bill and the accompanying taxpayer frustration. It may help avoid the need to issue refunds if the correction of the commitment reduces proportionally the amount owed by each taxpayer.

In a case where an amount raised by the legislative body has been omitted from the commitment, before correcting the commitment and issuing revised tax bills, the assessors should discuss with the municipal officers whether the money really needs to be raised to fund the expenditure it was meant to fund, or whether the expenditure can wait until another year or be funded from surplus, by transferring money from another account, or by borrowing. If the money isn't needed, then the assessors may choose to "let the sleeping dog lie" and not correct the commitment. If it is needed, but can be taken from another source, then the municipal officers may decide to call for the necessary vote of the legislative body to appropriate the money from that source or to authorize borrowing. If the need to make corrections authorized under § 95-B is not detected before the tax collector begins collecting taxes, revised tax bills may need to be sent or refunds issued.

There may be cases where math errors or use of inaccurate numbers cannot be corrected using § 95-B. Problems with the commitment resulting from the inclusion of too much overlay (36 M.R.S.A. § 710) or an amount which wasn't raised by the legislative body (36 M.R.S.A. § 503) should not be corrected using § 95-B. It may be legally necessary to prepare a new commitment or to abate each taxpayer's assessment in whole or in part and supplementally assess them the correct amount or issue a refund in order to correct some problems.

Whenever a problem is detected with a completed commitment, the assessors should consult with the attorney for the municipality, MMA's Legal Services Department, or the Maine Revenue Services staff before deciding how to proceed. The validity of the commitment is crucial to the collector's authority to collect property taxes.

Commitment Date/Due Date and Interest Date

According to 36 M.R.S.A. § 505, "[A]t any meeting at which it votes to raise a tax, or at any subsequent meeting prior to the commitment of that tax," the municipality may set the date by which taxes must be committed by the assessors. If the assessors later decide that they cannot meet that deadline, they cannot set a new commitment date; they must ask the selectpeople to call a special town meeting so that the voters may set a new date. If the commitment date is changed, the voters may need to change the due date and interest date also. To avoid these complications, MMA recommends having the town meeting set only a due date and interest date and leave the establishment of a commitment date to the assessors, which most towns do.

A similar problem arises where the voters do not set a commitment date, but set a date from which interest will begin to accrue on delinquent taxes. If the commitment will not be completed until close to the interest date or after that date, then the selectpeople should call a special town meeting to set a new interest date before the commitment is completed.

Time Limit for Completing Collection/Settlement and Discharge

The assessors must specify in the commitment warrant the date on or before which the tax collector must perfect his or her collections. That date cannot be less than one year from the date of the commitment of taxes. In the event that no time is specified in the collector's warrant, tax collectors must perfect their collections within two years after the date of the commitment of taxes. 36 M.R.S.A. § 760. Once the collector has completed the collection of taxes committed to him or her, the collector completes a form provided by Maine Revenue Services called a "Certificate of Settlement." When signed by a majority of the municipal officers, this certificate discharges the collector from any further obligation under the original commitment warrant. (See discussion and sample forms in the MMA *Tax Collectors and Treasurers Manual.*) A separate form must be completed for each year of taxes committed to the collector. The municipal officers should ensure that collectors prepare and submit these forms to them on a regular basis.

Recommitment

When a tax collector wants to resign before completing his or her collections, and the municipal officers agree to accept the resignation, MMA recommends that the municipal officers settle with that tax collector before appointing another in his or her place. However, it appears to be legal to appoint someone without first settling with the prior collector, so long as the new collector is willing to accept a recommitment of the outstanding taxes which is not based on a settlement statement of the balance to be collected. In any event, once a new collector is appointed, taxes outstanding must be recommitted to that person by the assessors in order for the new collector to have legal authority to act. The assessors must recommit any outstanding balances to the new collector by preparing the necessary warrants and tax lists and delivering them to the new tax collector to collect the sums due. 36 M.R.S.A. § 763. (See 36 M.R.S.A. § 766 and Appendix 3 for a sample recommitment warrant.) A separate recommitment should be done for each tax year in which taxes remain uncollected. When the necessary forms have been completed, the original goes to the tax collector and a copy is filed in the valuation book for the year in which the recommitment is done—not the valuation book for the year that the tax was originally committed.

Revenue Sharing

Each municipality receives a monthly check representing the municipality's share of the previous month's income and sales tax revenues under the State-Municipal Revenue Sharing Act. 30-A M.R.S.A. § 5681. The State Treasurer's office notifies municipalities of the estimated amount of money they will receive under the Act.

Before making their commitment to the tax collector, the assessors must deduct from the total amount required to be assessed an amount equal to the amount the municipal officers estimate will be received under the revenue sharing program during the municipal fiscal year. 36 M.R.S.A. § 714. It is essential that this be done before fixing the tax rate. Otherwise, there is a risk of an excessive overlay and an invalid assessment. (See Chapter 2 for discussion of overlay.) If the municipality actually receives more than the estimated amount of revenue sharing, the excess must be deducted on the next year's commitment form.

Homestead Exemption

Each municipality receives an annual payment representing the municipality's reimbursement under the Maine Resident Homestead Property Exemption Act. 36 M.R.S.A. §§ 681-689. In August of each year, the State Treasurer's office will notify municipalities of the estimated amount of money they will receive under the Act, and the State must pay the amount of reimbursement certified to each municipality by August 15th annually.

Before making their commitment to the tax collector, the assessors must deduct from the total amount required to be assessed an amount equal to the amount the municipal officers estimate will be received under this reimbursement program during the municipal fiscal year. 36 M.R.S.A. § 714. It is essential that this be done before fixing the tax rate. Otherwise, there is a risk of an excessive overlay and an invalid assessment. (See Chapter 2 for discussion of overlay.) If the municipality receives more than the estimated amount of reimbursement, the excess must be deducted on the next year's commitment form. (See Chapter 7 and Appendix 5 for more information about this exemption program.) Assessors should be sure that they are using printed commitment forms that have been revised to reflect the homestead reimbursement program. Compare the sample form in Appendix 3 with yours to be sure you are using a current form.

Special Town Meeting Cannot Raise Taxes After Commitment

There is no general State law prohibition against raising additional property taxes at a special town meeting, although a municipality may have adopted a charter provision to that effect. However, once taxes have been committed for the year to the collector, a municipality may not legally raise additional taxes to be included in that tax commitment. 1949-1950 Att. Gen. Rep. 50 (4/28/49). There is no statutory authority for a special tax in that situation. Nor would it fit within the scope of the supplemental assessment statute. 36 M.R.S.A. § 713. (See Chapter 4.) Additional money needed after commitment must come from other sources, such as a special town meeting appropriation from surplus or from borrowing. The only statutory exception to this rule is where the municipality is changing its fiscal year and bases the transition year commitment and the new fiscal year

commitment on a single April 1st assessment date (typically a July-June fiscal year). 30-A M.R.S.A. § 5651.

Commitment of Sewer User Rates

When a town operates a municipal sewer system and has not delegated any power by charter or ordinance to another board or commission, 30-A M.R.S.A. § 3406 authorizes the municipal officers to "establish a schedule of service charges…for the use of the system." Section 3406 (3) authorizes the municipal treasurer to collect those service charges plus interest "in the same manner as granted by Title 38, § 1208, to treasurers of sanitary sewer districts with reference to rates established and due…." Section 1208 provides that the "treasurer…shall have full and complete authority and power to collect the rates…and the same shall be committed to him." That statute then goes on to outline the steps in the sewer lien process if the treasurer decides to use that collection option.

Sections 3406 and 1208, when read together, appear to require that sewer rates be committed by the municipal officers to the treasurer before the treasurer is legally authorized to send sewer bills, accept money, or take any collection action, such as using the lien process. If the sewer rates are calculated on an annual basis and billed annually, then one commitment of that list of rates is enough. If the rates are calculated monthly or quarterly and billed at that same interval, a separate commitment for each billing would be necessary. If the rate is calculated on an annual basis but billed at intervals during the year, then only one commitment would be needed. A sample commitment form is included in Appendix 3. The municipality could adopt a different approach for billing and committing sewer rates by local home rule ordinance pursuant to 30-A M.R.S.A. § 3001.

When a sewer rate is overdue, the treasurer's authority to use a sewer lien and the timing of the lien process will be governed in part by whether the rate was committed once as a lump sum annual rate or whether it was committed in smaller increments (e.g., monthly or quarterly). When a rate is committed on an annual basis, the timing of a sewer lien will be linked to the due date of the annual rate. If it is billed once a year, then the due date of that payment is the focus. If it is billed in intervals, then the due date of the last payment would control the commencement of the lien process. For rates committed monthly or quarterly, a separate lien process would be used for each interval's outstanding balance.

The potential for multiple sewer liens and the need for separate interest calculations for each lien may make it less attractive for municipalities to calculate their sewer rates on a monthly or quarterly basis rather than on an annual basis. If a municipality wants to bill sewer rates monthly or quarterly but doesn't want to commit each monthly or quarterly rate, it should consider adopting a sewer ordinance which takes the following approach:

** the municipality will bill users on a quarterly/monthly basis based on metered usage without separately committing each of those amounts to the treasurer;

** interest at a rate of x% will accrue on unpaid balances x days after the date of the bill;
** any amounts of user charges and interest not paid x days from the date of the last bill of a given calendar year will be committed to the treasurer for collection using the lien process provided in 38 M.R.S.A. § 1208 and the date of the commitment shall be the "due date" for the purposes of calculating the time periods specified in § 1208 to perfect a sewer lien; and
** the treasurer is authorized to accept any payments of bills both before and after commitment, up to the date of lien foreclosure.

County Tax/School District Tax

A municipality is not required to vote to raise and appropriate its proportionate share of county taxes in order for the assessor to include that amount in the municipal property tax commitment. Under 30-A M.R.S.A. § 706, the county commissioners issue their warrant for collection directly to the local assessor requiring him/her to assess and commit to the tax collector the municipality's share of the county tax. The assessor and collector serve as agents of the county for the purpose of assessing and collecting county taxes. No appropriation by the legislative body is necessary because the obligation to pay the county tax is statutory and independent of any local budget process. The same is true for the assessment of a municipality's share of a school administrative district (SAD) or community school district (CSD) tax. 20-A M.R.S.A. §§ 1310 and 1703. *(April 2003 Supplement)*

Chapter 4

Supplemental Assessment

Supplemental Assessment

Generally

A supplemental assessment is an assessment that is made whenever the assessors find that taxable property, real or personal, has been "omitted" from an assessment or that a tax "is invalid or void by reason of illegality, error, or irregularity" in the assessment. 36 M.R.SA. § 713. The supplemental assessment must be made within three years from the "last" assessment date (i.e., April 1 of the current tax year). For example, on August 13, 2001, after having committed the 2001 taxes, the assessors find that they failed to assess John Smith for his new house, which was completed on March l3, 1997. They may supplementally assess him for 2001 as well as three years back from the "last assessment date" (April 1, 2001), meaning they also may supplementally assess him for 1998, 1999 and 2000. They may not legally assess the omitted 1997 tax.

A supplemental assessment also may be made during the municipal year (i.e., the budget year) in cases where the assessors have inadvertently or erroneously omitted from the assessment or commitment any tax raised by the municipality or the municipality's proportion of any State or county tax payable during the municipal year. In such a case, all taxable properties in the municipality would be supplementally assessed their proportionate share.

In municipalities that are not part of a primary assessing area, the assessors currently in office may make the supplemental assessment even though they may not have prepared the original assessment that is being corrected or replaced. When preparing the supplemental assessment, the assessors must do so in accordance with the assessment techniques, pricing schedules and principles used in making the original assessment. The fact that supplemental assessments increase the total assessment for the year in question by more than 5% (i.e., the overlay limit) does not invalidate the original assessment and commitment.

Tree Growth and Farm and Open Space Tax Withdrawal Penalties

Supplemental assessments may be used to assess penalties that are imposed upon the withdrawal of property from Tree Growth or from Farm and Open Space classifications. 36 M.R.S.A. § 713-B; *Dubois v. City of Saco,* 645 A.2d 1125 (Me. 1994). (See Chapter 5 for a discussion of penalty issues.)

Valuation Book

A separate page in the valuation book should be used to supplement the invoice, valuation and list of assessments for each tax year involved. Assessors must be sure to

include an adequate number of blank pages for supplemental assessments in the valuation book following the exemptions. Each list of supplemental assessments for a particular tax year must be covered by a separate supplemental tax certificate to the collector which must indicate the basis for the supplemental tax (e.g., omitted property or void assessment). A copy of the supplemental tax warrant (i.e., certificate of commitment) and a copy of the certificate of assessment provided to the treasurer should be attached to the supplemental tax list in the current valuation book. (Sample forms are included in Appendix 4.) Penalties supplementally assessed under the Tree Growth Tax Law or the Farm and Open Space Tax Law should be listed on a separate page of the valuation book.

Although not legally required, some assessors find it very helpful to create a separate supplemental assessment book in addition to the pages included in the valuation book.

Commitment/Interest

Supplemental assessments must be committed to the tax collector currently in office and must be accompanied by a certificate of assessment stating the basis for the supplemental assessment. The certificate also must indicate that the powers given to the collector in the original commitment warrant (stating the date of that warrant) carry over to the supplemental commitment, just as though the supplemental taxes had been included in the original list. Interest on unpaid balances of a supplemental tax accrues at the rate voted by the municipality for the current tax year beginning the sixtieth day after the date of commitment of the supplemental tax or on the date interest accrues on delinquent taxes under the original commitment, whichever date is later.

Omitted Tax/Void Tax

A supplemental assessment may not be used to increase the value of a person's property where the assessors discover that they undervalued the property after they have committed the taxes. In order to justify a supplemental assessment on the basis of an "omission" of an individual's property from the original assessment, the valuation book must show exactly what items and quantity of real and personal property actually were assessed. If the assessors cannot prove that they did not include all of the person's land, buildings or taxable personal property because the valuation book does not indicate the number of acres taxed, does not describe the buildings taxed or does not itemize the personal property taxed (as applicable to the particular property being supplementally assessed), a court could find that the assessors were trying to use a supplemental assessment improperly to correct an undervaluation. *Inhabitants of Dresden v. Bridge,* 90 Me. 489, 38 A.545 (1897); *Sweetsir v. Chandler,* 98 Me. 145, 56 A.584 (1903). Such a supplemental assessment would be invalid. *S.D. Warren Company v. Town of Standish,* 1998 ME 66, 708 A.2d 1019 (where property cards reflected that the assessor used an income approach to compute the value of those items of property that were necessary to

produce electricity, the court concluded that a power canal must have been included in the original assessment, since the power station could not produce electricity if the canal did not transport water from the dam to the turbines).

If an assessment is void, the tax may be abated within the applicable statutory deadlines (see Chapter 10). One example of a void tax corrected by an abatement is where a person owns no property in a town but is mistakenly assessed for a parcel of land. Another is where the "Estate of Susan Jones" is assessed rather than her heirs or devisees or personal representative. In both of these examples, if the assessors can determine who should have been taxed, they may make a supplemental assessment against the proper person, if done within the statutory deadlines under § 713.

Contrary to popular belief, a real estate assessment is not void simply because there is no adequate description of the real estate. Such an assessment cannot be used as a basis for a tax lien, but the tax can be collected through court action. (See discussion and case cites in MMA's *Tax Collectors and Treasurers Manual.*)

Errors

It has been held that, where the selectpeople of a town who are also assessors prepare a supplemental tax list which they sign as "selectpeople" rather than as "assessors," the error is correctable if a correction is made under oath pursuant to 5 M.R.S.A. § 95-B. However, where a supplemental tax list is not itself signed by the assessors or accompanied by a certificate stating that it was omitted from the original assessment, those problems cannot be corrected by supplying the missing information pursuant to § 95-B. *Inhabitants of Athens v. Whittier,* 122 Me. 86, 118 A.897 (1922). Section 95-B can only be used to correct a problem with a supplemental tax if the supplemental tax list was prepared legally in the first place. *Inhabitants of Topsham v. Purington,* 94 Me. 354, 47 A.919 (1900). The kinds of problems described above would make the list illegal. The only way to correct those problems is to start the supplemental assessment process again.

Where an assessment of a supplemental tax as it appears in the valuation book is correct, it is the duty of the assessors to correct any erroneous transcriptions in the collector's books. *Inhabitants of Eliot v. Prime,* 98 Me. 48, 56 A.207 (1903).

Invalid Tax Lien

According to 36 M.R.S.A. § 713-A, if a real estate tax lien is declared invalid by a court after foreclosure and the former owner recovers the property, the assessors may make supplemental assessments upon that property in that owner's name for any year back to the year of the foreclosure. The normal time limits on using supplemental assessments do not apply in this situation.

Chapter 5

Assessing Real Estate

Assessing Real Estate

Real Estate Defined Generally

"Real estate," as defined by 36 M.R.S.A. § 551, includes:

> all lands in the State and all buildings, mobile homes and other things affixed to the same, such as, but not limited to, camp trailers, together with the water power, shore privileges and rights, forests and mineral deposits appertaining thereto; interests and improvements in land, the fee of which is in the State; interests by contract or otherwise in real estate exempt from taxation; and lines of electric light and power companies. Buildings, mobile homes and other things affixed to the land, on leased land or on land not owned by the owner of the buildings, shall be considered real estate for purposes of taxation and shall be taxed in the place where said land is located. Mobile homes, except stock in trade, shall be considered real estate for purposes of taxation.

Where and To Whom Assessed Generally

General Rule. All real estate must be taxed in the place where it is located. Assessors have discretion to tax real estate either to the owner on April 1 or to the person in possession on April 1, whether that person is a resident or a nonresident. *Mason v. Town of Readfield,* 1998 ME 201, 715 A.2d 179.

Deeded Title; Effect of Recording Deed. In order for a person to be the legal owner of real estate, a deed for that property must actually be "delivered" (given to) the new owner. Title passes legally when the deed is physically received by the new owner. (See the discussion of divorce decrees later in this chapter for an exception to this general rule.) The act of recording the deed does not affect the transfer of title to the property; whether a deed is recorded or not, title still legally passes if the deed has been "delivered." Recording the deed is for the new owner's protection. If Mr. B tried to buy the same piece of property that had just been sold to Ms. A and was unaware of the prior conveyance to Ms. A because she had not recorded her deed, then Mr. B could legally defeat A's claim of title to the property if B recorded his deed before A did.

"Person in Possession" Assessment. Where real estate is assessed to the person in possession rather than to the owner, the assessors should add the words "person in possession" immediately after the name of the person as it appears on their list. Where a parcel of real estate is assessed to a person as the "person in possession," the assessment is valid even though the person to whom the real estate is so taxed is actually in

possession of only a part of the entire parcel. *Murray v. Ryder,* 120 Me. 471, 115 A.256 (1921).

Assessment to Wrong Person of All or Part of the Property. However, assessors must be careful to assess all property in the name of the proper person. An assessment made against a person not liable to taxation for that property is generally void and uncollectible. Where the assessors discover that property has been assessed to the wrong person, they generally should abate the tax and supplementally assess the proper party, provided that the time in which abatements and supplemental assessments may be made has not expired. (See Chapters 4 and 10 for a discussion of supplemental assessments and abatements.)

If a person is assessed for property that he owns and for property that he does not own (or which is exempt) as part of the same assessment and an abatement for overvaluation is not requested and granted within the deadlines established in 36 M.R.S.A. § 841(l), an abatement legally may not be granted later to correct the error and that person is liable for the tax. *Berry v. Daigle,* 322 A.2d 320 (Me. 1974); *Depositors Trust Co. v. City of Belfast,* 295 A.2d 28 (Me. 1972); *City of Lewiston v. All Maine Fair Association,* 138 Me. 39, 21 A.2d 625 (1941); *Portland Terminal Co. v. City of Portland,* 129 Me. 264, 267, 151 A.460 (1930); *City of Rockland v. Rockland Water Co.,* 82 Me. 188 (1889); *Inhabitants of Town of Georgetown v. Reid,* 132 Me. 414, 171 A.907 (1934); *City of Bath v. Whitmore,* 79 Me. 182, 9 A.119 (1887); *Gilpatrick v. Inhabitants of Saco,* 57 Me. 277 (1869); *contra, Holbrook Island Sanctuary v. Inhabitants of Town of Brooksville,* 161 Me. 476, 214 A.2d 660 (1965).

Change of Ownership on or Before April 1st; Failure to Give Written Notice to Assessors. If the ownership or occupancy of property changes and the assessors do not receive written notice of the change and the name of the new owner or occupant before making an assessment, the assessors legally may assess the person to whom the property was last assessed. 36 M.R.S.A. § 557 (see also 36 M.R.S.A. § 903). However, if the person to whom the property was formerly assessed dies, the assessors may not rely on § 557 and may not continue to assess in that person's name. *Morrill v. Lovett,* 95 Me. 165, 49 A.666 (1901). (See discussion later in this chapter regarding deceased owners.)

Changing Assessing Records to Show Change in Ownership After April 1st

Because the status of all taxpayers and of all taxable property is fixed as of April 1, according to 36 M.R.S.A. § 502, no change of ownership after April 1 will affect the assessment made in that year. In cases where property changes hands on April 1, taxes should be assessed to the person in whom title was vested on that date.

Assessors are authorized to change their assessing records to reflect the identity of a new owner upon receiving a declaration of value reflecting a change of ownership. Title 36 M.R.S.A. § 502 reads as follows: "Upon receipt of a declaration of value under § 4641-D reflecting a change of ownership in real property, the assessor may change the records of the municipality to reflect the identity of the new owner, if notice of tax liabilities is sent both to the new owner and to the owner of record as of April 1st when the liability accrued."

According to the legislative history of this law, it was intended to allow "the municipal assessor to identify the new owner of property for purposes of issuing tax bills to the proper person. This is intended to avoid the filing of liens in situations in which a tax bill was sent only to the owner of record as of April 1st rather than the new owner." The effect of this law is not totally clear. It does not appear to change the existing rule that the assessor must assess the person who owned the property on April 1st. Instead, it authorizes the assessor to make an additional entry in the valuation book showing the name of the new owner when a declaration of value documenting the change is received after April 1st but before tax bills are sent. It does not authorize or require the assessor to substitute the new owner for the owner on April 1st. The owner on April 1st remains legally liable for the tax assessed as of April 1st. If the tax becomes delinquent, the lien will be in that person's name, not in the name of the new owner. (It is the new owner, however, who will lose the property if the lien forecloses.) The law also encourages municipalities to send a copy of the tax bill to the new owner if the change of ownership has been reported before taxes are committed and bills are sent.

Many municipalities have been sending tax bills to new owners as a courtesy all along. The language in § 502 quoted above was not intended to mandate this practice. Rather, it highlights the problems that can result when new owners do not receive notice of taxes due and encourages municipalities to notify them in order to avoid unnecessary tax liens.

Special Assessment Rules

Property in Bankruptcy. If a person or business owning property has filed for bankruptcy on or before April 1st, the property should be assessed in the name of the owner and the bankruptcy trustee. This method for designating the owner should be used until the municipality receives notice from the bankruptcy court that the property in question has been abandoned or that the owner and property have been discharged from the bankruptcy court's jurisdiction and that the case has been closed.

Mortgaged Real Estate; Installment Sale; Bond for a Deed. According to 36 M.R.S.A. § 554, in the case of real estate, the mortgagor should be treated as the owner until the mortgagee takes possession, after which the mortgagee shall be treated as the owner. Land cannot be taxed to a mortgagee who is not in possession. *Coombs v. Warren,* 34 Me. 89 (1852). The "mortgagor" is the person whose property is subject to the

mortgage. The "mortgagee" is the person or company (usually a bank) which is holding the mortgage as security for a loan. Where a buyer has entered into an installment sales contract rather than a mortgage arrangement, the seller holds title to the property until payments are complete, and State law does not deem the purchaser to be a "mortgagor" (as would be the case in a conventional real estate transaction). Because the purchaser is not a mortgagor, that person is not deemed to be the owner for assessment purposes under 36 M.R.S.A. § 554, and the assessors have the discretion to tax either the owner or the person in possession. *Mason v. Town of Readfield,* 1998 ME 201, 715 A.2d 179. This would also be true in the case of a "bond for a deed" sales transaction, where the seller typically retains title until the buyer has paid the agreed upon price in full.

Tenants in Common or Joint Tenants. According to 36 M.R.S.A. § 555, a tenant in common or a joint tenant may be considered sole owner for the purposes of taxation, unless he notifies the assessors what his interest is. When a tax is assessed on such land, any of the tenants in common or joint tenants may furnish the tax collector with an accurate description of his individual interest and pay his proportionate part of the tax, freeing his interest from a possible tax lien. The tax collector then should forward that description to the assessors so that future assessments may be separately made.

Assessors should be aware that § 555 is only an assessment rule. This statute makes it easier to assess a property held through tenancy in common or joint tenancy by allowing the municipality to assess only one tenant in common or joint tenant. However, the Maine Supreme Judicial Court has held that, when a tax collector wants to use the tax lien process to collect a tax, the collector must list the names of all of the property owners on the tax lien certificate, not just the name of the person assessed, in order to have a valid tax lien covering delinquent taxes on that property. Therefore, in order to ensure that the collector has the names of all of the property owners, it makes sense for the assessor to list all of them in the assessment, even though not legally required for assessment purposes. *Town of Pownal v. Anderson,* 1999 ME 70, 728 A.2d 1254.

Real Estate Subject to a Tax Lien or Tax-Acquired. Real estate subject to a tax lien is properly assessed to the owner while he remains in possession with the right to redeem. *Johnson v. Monson Consolidated Slate Co*., 108 Me. 296, 80 A.750 (1911). In instances where the redemption period under a tax lien has expired and the municipality continues to assess to the former owner of the real estate, the real estate still belongs to the municipality. (See MMA's *Tax Collectors and Treasurers Manual* for a discussion of the tax lien process, redemption period, and tax-acquired property.) Assessors cannot waive the municipality's rights in the real estate by continuing to assess to a former owner. *Flower v. Town of Phippsburg*, 644 A.2d 1031 (Me. 1994). *Cf., Inhabitants of Town of Milo v. Milo Water Co.,* 131 Me. 372, 163 A.163 (1932). Once title has passed to the municipality, if the property is occupied, any future assessments to the former owner while the town owns the property should be in the former owner's name as "person in

possession" in order to clarify his or her relationship to the property and to ensure a valid assessment.

As a practical matter, it generally is poor administration to continue assessment of property which has become tax-acquired. In most cases, piling up liens year after year on such property makes little sense and is an injustice to the municipality. The municipality should take possession for its own use and stop assessing the property or sell the property to get it back on the tax rolls. Whether the municipality keeps the land, sells it back to the former owner, or puts it out for bid will depend on the municipality's tax-acquired property policy. (See MMA's *Guide to Municipal Liens Manual*.)

Partnership Property. As a general rule, property held in the name of a partnership is partnership property and should be assessed in the name of the partnership and not the individual partners. See generally, 31 M.R.S.A. §§ 288-290-A, 305.

Property Held in Trust. The person or entity designated as the "trustee" of property is the legal owner of that property. *Silverman v. Town of Alton,* 451 A.2d 103 (Me. 1982). When assessing a property in trust, the assessment should be to the trustee, using the following information from the trust deed: name of trustee, title of trustee, title of trust, and date of trust deed. There may be cases in which a trust document creates what is known as a "dry trust," in which the beneficiary of the trust (the holder of "equitable title" in the trust property) is given the type of control over the trust property that the trustee (the legal owner of the trust property) would normally have. Interpreting such a trust document, courts in some states have found that the trust beneficiary should be taxed as the owner of the trust property rather than the trustee. Silverman, supra, at 106. *(last 2 sentences from April 2003 supplement)*

Real Estate of Minor. Real estate of a minor should be assessed to the minor, unless a guardian has been formally appointed by the court. 33 M.R.S.A. § 52.

Life Tenancy. Real estate held by a "life tenant" (i.e., a person with a "life estate") should be assessed in the name of the life tenant as owner. After the death of the life tenant, the real estate should be taxed in subsequent years in the name of the "remainderman" (the person who gets ownership according to the deed creating the life tenancy). However, the remainderman should not be taxed for the real estate during the lifetime of the person holding the life estate. *Kelley v. Jones,* 110 Me. 360, 86 A.252 (1913).

Where A conveys land to B but "reserves unto herself during the full term of her natural life the right of possession and occupancy in and to the said real estate," a court probably would interpret this as the reservation of a life estate since these are the basic rights of a life tenant.

Owner Unknown. In cases where real estate has not been assessed to anyone for the preceding 20 years or more and where the assessors have attempted to determine the owner's name without success after a reasonably diligent search, 36 M.R.S.A. § 557-A allows the property to be assessed as "owner unknown." (A "reasonably diligent search" probably means a title search in the Registry.) The procedure spelled out in the law is as follows: Property of an unknown owner is assessed as any other property, except that the owner is indicated as "unknown." The assessor must advertise the intention to assess property to an "owner unknown" once a week for three consecutive weeks in a newspaper of general circulation in the county in which the property is located. "The notice must describe the real estate that is being assessed so that a reasonable person may know, with probable certainty," what property is being taxed, "together with a statement that the property is assessed to an unknown owner as the result of the failure of a reasonable search to ascertain an owner of record." Such a newspaper publication is sufficient legal notice of the assessment. At the time of this publication, a copy of the same notice must be sent by certified mail, return receipt requested, to each abutting property owner. (See Appendix 2 for a sample notice.) The assessor should give this notice sometime before completing the valuation and commitment of taxes. One purpose of the notice appears to be to solicit information from abutters and the general public before the assessment is completed in order to determine who the owner actually is.

Leased Property. Title 36 M.R.S.A. § 553 clearly states that real property may be taxed either to the owner or to the "person in possession." Assessors should keep this in mind when dealing with leased property; there may be times when it will be easier to assess an occupant of real estate than the owner (i.e., when the owner's address is unknown). Title 36 M.R.S.A. § 556 also supports an assessment made against a tenant or lessee.

Where the real estate is owned by a government entity but leased to a private party for a public use, the value of the leasehold interest may be taxable even though the property itself is eligible for an exemption under 36 M.R.S.A. § 651. *Howard D. Johnson Co. v. King,* 351 A.2d 524 (Me. 1976); 36 M.R.S.A. § 551.

In organized municipalities, buildings on leased land always must be taxed as real estate, not as personal property. *See Portland Terminal Co. v. Hinds,* 141 Me. 68, 39 A.2d 5 (1944); *Inhabitants of Owls Head v. Dodge,* 151 Me. 473, 121 A.2d 347 (1956).

Owner Deceased. It is important for the assessor to understand the meaning of three words before learning the rules governing the assessment of a deceased person's property: (1) "heir," which means a person to whom real estate passed upon the death of another under the State's intestacy laws because there was no will; (2) "devisee," which means a person to whom real estate passed under the provisions of a will; and (3) "estate," which means the real estate and personal property of a deceased person. After the estate of a deceased person is distributed, it becomes the sole property of the heir or devisee.

According to 36 M.R.S.A. § 559, the real estate of deceased persons must be taxed to heirs or devisees or to the personal representative named in the will (formerly called an "executor") or appointed by the court (formerly called an "administrator") to settle the estate. The property cannot be taxed to the "estate of." *Inhabitants of Fairfield v. Woodman,* 76 Me. 549 (1884); *Talbot v. Inhabitants of Wesley,* 116 Me. 208, 100 A.937 (1917). An assessment to "heirs of" where there is a will, or an assessment to "devisees of" where there is no will, is invalid. *Inhabitants of Eliot v. Spinney,* 69 Me. 31 (1878). But, an assessment against a decedent's heirs is valid when made before the "proof and allowance" of a will (a court procedure). *Gray v. Hutchins,* 150 Me. 96, 104 A.2d 423 (1954). An attempt to cover all the bases by assessing "to the heirs of or devisees of" also is invalid. *Inhabitants of Eliot v. Prime,* 98 Me. 48, 51, 56 A.207 (1903). The assessors must investigate whether a deceased owner had a will and, if so, its status as of April 1.

Until the assessors receive notice of the division of the estate and the names of the specific heirs or devisees, they may tax the undivided real estate of a deceased person to that person's "heirs" or "devisees" generally or to that person's personal representative; as noted earlier, whether "heirs" or "devisees" is used depends on whether there is a will and its status. A tax to the heirs or to the devisees may be made without designating any of them individually and each heir or devisee shall be liable for the whole tax. Any heir or devisee who pays the whole tax is entitled to reimbursement from the others. *Inhabitants of Bucksport v. Swazey,* 132 Me. 36, 165 A.164 (1933).

Where a person dies without a will (i.e., "intestate"), 18-A M.R.S.A. § 2-102 outlines the share of the estate to which the person's surviving spouse and other surviving relatives are entitled. Title 18-A M.R.S.A. § 3-901 discusses how heirs and devisees may establish title to their share and reads as follows: "In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption." (Allowances, exemptions, abatement, retainer, advancement and ademption are covered in other sections of the Probate Code.)

A tax assessed to the personal representative is collected from him or her in the same way as a tax assessed against him or her in a private capacity. *Inhabitants of Fairfield v. Woodman*, 76 Me. 549 (1884). Where the estate has sufficient funds, the tax will be allowed as a charge against the estate by the judge of probate. However, when the personal representative notifies the assessors that there is not enough money in the estate to pay the tax and gives them the names of the heirs or devisees and the proportions of

their interests in the real estate to the best of his knowledge, the assessors may no longer assess the real estate to the personal representative.

If a landowner dies after April 1st, the property is assessed in his name for that tax year. *Egery v. Woodward,* 56 Me. 45 (1868).

Standing Wood, Bark and Timber. "Whenever the owner of real estate notifies the assessors that any part of the wood, bark and timber standing on the land has been sold by contract in writing" and shows the assessors proper evidence of the sale, the assessors must tax that wood, bark and timber to the purchaser. 36 M.R.S.A. § 562. A lien is created on that wood, bark and timber for payment of the tax and may be enforced by the tax collector by a sale after it is cut. 36 M.R.S.A. § 991.

Real Estate of Banks. All real estate in the State, including vaults and safe deposit plants, owned by any bank incorporated by this State, or by any national bank or banking association, or by any corporation organized under the laws of this State for the purpose of doing a loan, trust or banking business and having a capital divided into shares shall be taxed in the place where that property is situated to the bank, banking association or corporation. This section does not apply to loan and building associations. 36 M.R.S.A. § 560.

Transfer of Property as Part of Divorce Proceedings. Title 9 M.R.S.A. § 725(2) provides that the recording of a divorce decree or an abstract of the decree "has the force and effect of a quit claim deed releasing all interest in the real estate described [therein]." If the parties present to the assessor a certified copy of the recorded divorce decree or abstract, the assessor may rely on that document as a basis for changing the town's assessment records to reflect the new ownership of the property as reflected in the recorded decree or abstract.

Pipes of Water Companies. The aqueducts, pipes and conduits of water companies are real estate, and not personal property. Such property is taxable in the municipality where situated, unless exempt from taxation under 36 M.R.S.A. § 656 because the municipality uses it to provide water to fight fires without charge. *Inhabitants of Dover v. Maine Water Co.,* 90 Me. 180, 38 A.101 (1897); *Inhabitants of Paris v. Norway Water Co*., 85 Me. 330, 27 A.143 (1893).

Light and Power Transmission Lines. Title 36 M.R.S.A. § 551 specifically provides that transmission lines of electric light and power companies are taxable as real estate. (See also Maine Revenue Services Bulletin No. 25.)

Water Power. Title 36 M.R.S.A. § 551 defines "real estate" as including "water power, shore privileges and rights."

Regarding the effect of an unused dam on land values, the court has held that in assessing lands on the shore of a stream and an unused dam across the stream, so far as the land was enhanced by the existence of the water and the means of creating the power, the dam was property to be considered in determining the value of the land. *Saco Water Power Co. v. Inhabitants of Buxton,* 98 Me. 295, 56 A.914 (1903). *See City of Bangor v. City of Brewer,* 142 Me. 6, 45 A.2d 434 (1946).

Hydroelectric Projects. For a case regarding the proper valuation of a hydroelectric project, see *Central Maine Power Co. v. Town of Moscow,* 649 A.2d 320 (1994).

Fixtures. Personal property which is specially adapted and designed to be used in connection with the real estate to which is attached and which was intended by the owner to be a permanent attachment should be assessed as part of the improved real estate rather than as separate items of personal property. *Hawkins v. Hersey,* 86 Me. 394, 30 A.14 (1894); *Hayford v. Wentworth,* 97 Me. 347, 54 A.940 (1903); *Squire v. City of Portland,* 106 Me. 234, 76 A.679 (1909); *Cumberland County Power and Light Co. v. Hotel Ambassador,* 134 Me. 153, 183 A.132 (1936). (See Chapter 6 for a discussion of personal property assessment.)

Mobile Homes. Mobile homes, except stock in trade, are taxable as real estate, according to 36 M.R.S.A. § 551; however, if a mobile home is on display or being used as a model by a dealer for the purpose of making a sale, then it is exempt under 36 M.R.S.A. § 655(1)(B). *Inhabitants of Town of Farmington v. Hardy's Trailer Sales, Inc.,* 410 A.2d 221 (Me. 1980). "Mobile home" for tax purposes is defined in 36 M.R.S.A. § 1481. Exempt "stock-in-trade" also includes "an unoccupied manufactured home, as defined in Title 10 M.R.S.A. § 9002, subsection 7, paragraph A or C, that was not previously occupied at its present location, that is not connected to water or sewer and that is owned and offered for sale by a person licensed for the retail sale of manufactured homes pursuant to Title 10, chapter 951, subchapter II." However, a "camper trailer," which also is defined in § 1481, generally is taxed as personal property. (See Maine Revenue Services Bulletin #6 regarding the taxation of mobile homes and camper trailers.)

Mobile homes owned by military personnel who live in Maine but who are not legal residents of this State may not be taxable at all in Maine. If the mobile home is not permanently attached to the land on which it is located, it probably will be considered personal property by a court and not taxable by virtue of the Soldiers' and Sailors' Civil Relief Act (50 U.S.C.A. App. §§ 560, 574; *e.g.*, *United States v. Shelby County, Tennessee*, 385 F. Supp. 1187 (1974)).

If a mobile home is located on leased property, assessors should consider the relative merits of taxing the mobile home and the land either separately or together. As discussed above, the occupier of leased land may be taxed for the land. 36 M.R.S.A. § 553. Arguably, the assessor could make a single assessment taxing both mobile home and land to the owner of the mobile home (located on leased land), which would allow a lien to be

placed on the land for payment of the entire tax even if the mobile home were moved before taxes were paid. (The valuation book should indicate that the person being taxed is the owner of the mobile home and the "person in possession" of the land.) However, a town may not wish to burden a landowner with responsibility for paying the tax on someone else's mobile home in order to remove the tax lien on his land. Separate assessment would require the landowner to pay the tax on the land only. A mobile home on leased land may not be assessed to the owner of the land (lessor), unless the lessor also owns the mobile home or is in possession of it.

Title 30-A M.R.S.A. § 3009(1-A) authorizes the municipal officers to enact an ordinance requiring the owner of a mobile home or modular construction home to notify the municipal assessor, according to the terms of the ordinance, upon the transfer of a mobile home or modular home when that home is situated on land that is not owned by the homeowner.

Condominium Units. The definition of "condominium" provided in the Maine Condominium Act (33 M.R.S.A. § 1601-103), is "real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions under a declaration, or an amendment to a declaration, duly recorded pursuant to the Act." To constitute a condominium, title to the individual interests in the common elements must be held by the unit owners. A real estate development consisting exclusively of clustered, detached, single family residences is not a condominium unless designated as such in the declaration.

Section 1601-105 of the Condominium Act sets out the basic rules regarding taxation of condominium units. As a general rule, each unit which has been conveyed is treated as a separate parcel of real estate and is separately assessed. The assessment for a particular unit should include the value of its proportional interest in the common elements. Common elements never are separately assessed except when a declarant holds reserved development rights to add or withdraw real estate. ("Declarant" means the person or group of people who offers to dispose of an interest in a unit not previously disposed of as part of a common promotional plan or who reserves or succeeds to a special right. § 1601-103(9).) In that case, the declarant would be separately assessed for that portion of the common elements and the unit owners would not be taxed. Where no units have been sold, the real estate may be taxed and assessed in any manner provided by law.

In some condominium declarations, the declarant may have reserved certain development rights under § 1602-105 of the Act. According to § 1602-110, until the declarant gives written notice to the assessor that he has converted an existing unit into additional units or common elements, or until the period during which such conversion may occur has expired, whichever occurs first, the declarant remains solely liable for taxes assessed against that part of the real estate.

Some condominium projects involve what are called "time-share estates." These are governed by 33 M.R.S.A. §§ 591-594. A "time-share estate" is an interest in a unit under which the owner of the interest has the exclusive right of use, possession or occupancy for a fixed period of time each year for a certain number of years or indefinitely. Each time-share estate in a unit constitutes a separate estate in real property and must be separately assessed and taxed. This is true even where one person owns a number of time-share estates in the same project or even in the same unit. According to § 594, "fees, charges, late charges, fines, and interest charged in accordance with the project instrument are enforceable as assessments," unless otherwise provided in the time-share instrument. If the assessor is authorized to make assessments for time-share expenses under the terms of the instrument, then the assessor has a duty to provide a recordable written statement showing the amount of unpaid assessments against a particular time-share when requested to do so in writing by the time-share owner. The statement must be furnished by the assessor within ten business days. It is very important for this statement to be accurate because it will be binding in favor of anyone who reasonably relies on it. 36 M.R.S.A. § 594.

The time-share condominium statute also defines another type of time-share interest, a "time-share license." A time-share license conveys a right to occupy a unit during three or more separate time periods over a period of at least three years, including renewal options. It does not convey rights of ownership in the time-share unit, as is the case with a time-share estate. As a general rule, the owner of the time-share unit probably should be assessed rather than the holder of a time-share license where a license is involved.

For a case involving the assessment of a condominum complex, *see Muirgen Properties, Inc. v. Town of Boothbay,* 663 A.2d 55 (Me. 1995).

Farm and Open Space. Under Maine law, certain landowners may qualify to have their farmland or open space land taxed at its current use value rather than its fair market value. The statute which governs this is called the Farm and Open Space Tax Law and is 36 M.R.S.A. §§ 1101-1121. This law is summarized in Maine Revenue Services Property Tax Bulletin #18. Of particular interest is the 1993 amendment adopting 36 M.R.S.A. § 1106-A, which attempts to clarify when property is eligible for open space classification. See Appendix 2 for a discussion of the Open Space Tax Law prepared by Maine Coast Heritage Trust. Property that hasn't been classified for current use taxation under this statute would be assessed according to its "just value" as defined in 36 M.R.S.A. § 701-A.

Forest Land. Under Maine law, certain landowners may qualify to have their forest land taxed at its current use value rather than its fair market value. The statute which governs this is the Tree Growth Tax Law. 36 M.R.S.A. §§ 571-584-A. This law is summarized in Maine Revenue Services Property Tax Bulletin #19.

** **Withdrawal Penalty.** A frequently asked question is how to deal with the penalty for withdrawal of property from Tree Growth Tax Law classification. See *Hornberger v. Town of Bremen*, CV-87-126 (Me. Super. Ct., Linc. Cty., Jan. 17, 1989) for a case regarding calculation of the penalty. Title 36 M.R.S.A. § 581 states that "penalties shall be paid to the tax collector as additional property taxes upon withdrawal." This statute was interpreted by the Maine Supreme Judicial Court in *Dubois v. City of Saco,* 645 A.2d 1125 (Me. 1994). A 1993 amendment to the law makes it clear that the penalty may be assessed and collected using the process for supplemental assessments in 36 M.R.S.A. §§ 713 and 713-B. (See Chapter 4 of this manual.) It is also legal to include it in the annual tax commitment, if the withdrawal occurs and is detected before the annual assessment and commitment. Either way, the assessment should be identified as a Tree Growth penalty and should appear on a separately labeled page of the valuation book. The penalty for withdrawal from Tree Growth is imposed by statute, so local officials have no choice but to assess the penalty. There seems to be no way the penalty can be postponed given the liability the law imposes immediately upon withdrawal.

For an August 1993 *Maine Townsman* Legal Note explaining how to calculate a withdrawal penalty under § 581 of the Tree Growth law, see Appendix 2.

While assessments made under the Tree Growth law are subject to the abatement procedures of 36 M.R.S.A. § 841, the statutory grounds for abatement are limited to illegality, error, or irregularity and poverty or infirmity. There is no basis for abatement for "financial hardship." Nor is it reasonable to believe that the poverty abatement law was intended to allow forgiveness of withdrawal penalties on land that is undeveloped real estate of at least ten acres. Parcels of this size and description should, almost by definition, be considered to be nonessential assets of the taxpayer that can be liquidated, if necessary, in order to satisfy the taxpayer's obligation. Barring an illegal assessment or a mistake in the calculation of a withdrawal penalty, therefore, abatement of Tree Growth withdrawal penalties should not even be considered.

No current statutory provision authorizes installment payments of Tree Growth withdrawal penalties. This was an option from 1995-1996, but that law was repealed in 1999. The law authorizing installment payments was discussed in a *Maine Townsman* Legal Note in the May 1996 issue. In contrast, 36 M.R.S.A. § 1112 allows withdrawal penalties assessed under the Farm and Open Space Tax Law to be paid in up to five equal annual installments.

Acts which constitute withdrawal are discussed below.

** **House Lots.** Another issue which arises in connection with the Tree Growth Tax Law is the amount of land that an assessor should treat as the "house lot" where a residence is located on the Tree Growth parcel. The position of Maine Revenue Services

appears to be that a town's minimum lot size is irrelevant in reaching this decision. An assessor should reserve only as much land as the house, yard, well, septic and similar improvements physically occupy. The taxpayer should indicate in his or her application (or show on an accompanying sketch) where the boundaries of this reserved land are and where the tree growth land begins. The assessor should advise the taxpayer that any encroachment into the classified forest land will be treated as the withdrawal of that part of the forested parcel and will result in a penalty.

** **Parcels Under 10 Acres.** In order to be eligible for classification under the Tree Growth Law, a parcel must be at least ten acres. 36 M.R.S.A. § 574-B. If the owner of a classified parcel sells a lot from that parcel which is less than 10 acres, the seller is responsible for the withdrawal penalty effective November 1, 2001; previously, the buyer was responsible. 36 M.R.S.A. § 581-A. Likewise, if the sale leaves the original parcel with less than ten acres, the remaining land is withdrawn from Tree Growth classification and a penalty assessed against the owner.

** **Failure to Comply With a Forest Management Plan; Change of Use; Change of Ownership.** Effective July 25, 2002, when a landowner files a "Notification of Harvest" form with the Bureau of Forestry for land which is classified under the Tree Growth Law, the landowner or the landowner's licensed professional forester must sign a statement indicating that the proposed harvest is consistent with the forest management plan prepared for that land. Failure to do this constitutes a withdrawal of the land being harvested from Tree Growth classification. The director of the Bureau of Forestry is required to notify the assessors when such an automatic withdrawal has occurred. 12 M.R.S.A. § 8883(1)(F-1).

The landowner is also required to indicate on the "Notification of Harvest" form whether the proposed harvest is for the purpose of converting the land to another use within two years. If a change in use is indicated, this also constitutes a withdrawal of the land to be harvested from Tree Growth classification and the Director of the Bureau must give notice of this withdrawal to the assessors. 12 M.R.S.A. § 8883 (1) (G).

When land classified under the Tree Growth Law is transferred to a new owner, the new owner must file with the municipal assessor within one year of the date of transfer either (1) a sworn statement indicating that a new forest management plan has been prepared or (2) a statement from a licensed professional forester that the land is being managed in accordance with the plan prepared for the previous owner. The "new owner" means the owner of the controlling interest in the fee ownership or in the timber rights on the land. Until the new owner files the required statement, no commercial timber harvesting may occur on that land. 36 M.R.S.A. § 574-B(3).

The landowner must provide a copy of his/her forest management plan when requested to do so by the assessor; the plan is a confidential record. The assessor has a right to enter and examine land classified under the Tree Growth Law. When requested, the Director of the Bureau of Forestry is authorized to assist an assessor in evaluating a forest management plan to determine whether the plan meets the statutory definition of a plan in the Tree Growth Law and also whether any harvesting activity is being done in compliance with the plan. 36 M.R.S.A. § 579; 36 M.R.S.A. § 575-A.

** **Effect of Zoning or Subdivision Approval on Tree Growth Classification.** It is the position of Maine Revenue Services that Tree Growth classification may not legally be denied on the basis that the landowner has received zoning or subdivision approval which indicates that he/she has an intention to use the land other than for growth of trees for commercial use. Tree Growth classification focuses on "current use" of the property, not potential future uses. In a case decided by the State Board of Property Tax Review, *Gottschalk v. Town of Brooklin* (SBPTR 90-30), the town argued that the existence of an approved subdivision plan for a parcel of land indicated an intention on the part of the owner to create a residential subdivision. The State Board ruled that the subdivision plan did not constitute a change in use of the property by itself and therefore did not justify a decision by the assessors to treat the parcel as being withdrawn from Tree Growth classification. Maine Revenue Services also relies on the State Board's decision in *Blanch v. Town of Lubec* (SBPTR 96-048) in support of its position that a landowner's future intent regarding use of the land is not relevant to its current use for Tree Growth classification purposes.

** **Non-Tree Growth Tax Law Forest Land.** In the assessment of forested land in excess of 25 acres which is in single ownership and devoted to commercial harvesting and which has not qualified for taxation under the Tree Growth Tax Law, the assessors should be guided by the provisions of 36 M.R.S.A. §§ 563 and 564. Section 563 indicates that the method of assessment should be based on the productivity of the land, taking into account its location and proximity to public facilities as factors contributing to the owner's ability to operate it on a sustained yield basis. Section 564 states that an assessment will be held to be in excess of just value if the owner can prove that the assessment creates an incentive to abandon it, to strip it, or to operate it otherwise than on a sustained yield basis. The landowner must be able to show that because of the tax he or she cannot efficiently operate on a sustained yield basis and still realize an adequate annual net return in light of the risks involved.

Railroad Property. The buildings of every railroad corporation or association, whether located inside or outside of the boundaries of the right-of-way, its land and fixtures outside of its located right-of-way, and so much of its located right-of-way over which all railroad service has been abandoned, are subject to taxation in the places in which they are situated and shall be regarded as nonresident land. 36 M.R.S.A. § 561. ("Located

right-of-way" has been interpreted to mean four rods wide, except through woodland and forest, where the right-of-way may be six rods in width.) *Portland Terminal Co. v. Hinds,* 134 Me. 434, 187 A.716 (1944); *Portland, Saco and Portsmouth Railroad Co. v. City of Saco,* 60 Me. 196 (1872). For purposes of this statute, "abandoned" means legal abandonment by the federal Interstate Commerce Commission (ICC). *Maine Central Railroad Co. v. Town of Dexter,* 588 A.2d 289 (Me. 1981). (See 36 M.R.S.A. § 2623 regarding an annual excise tax paid to the State.)

Dish Antennas (CATV and Satellite). These should be taxed as real estate. Maine Revenue Services can provide information regarding the replacement value of these antennas to assessors who request it in writing. Assessors should provide Maine Revenue Services with the specifications of the antenna (height, width, material, portability, etc.).

Conservation Easements. The nature, creation, and effect on property value of a conservation easement are issues discussed in Technical Bulletin No. 104 prepared by Maine Coast Heritage Trust (MCHT). Another publication entitled *Appraisal of Conservation Easements* also is available from MCHT. Maine Revenue Services Property Tax Bulletin #24 addresses the effects of easements of all kinds on the just value of property. For a case discussing the effect of a conservation easement on the value of an underlying parcel, see *Wesson v. Town of Bremen,* 667 A.2d 596 (1995). (See Appendix 7 for information on how to contact Maine Coast Heritage Trust and Maine Revenue Services.)

Subsidized Housing. The proper method for valuing a Farmers Home Administration Section 515 housing project was the subject of a 1992 State Board of Property Tax Review decision involving the Town of Madison; the town was represented by its certified assessor, William Van Tuinen.

For a case involving the assessment of rental housing constructed and maintained under the provisions of section 236 of the National Housing Act, see *Spear v. Westbrook Board of Assessors,* CV-73-270, CV-74-132, CV-75-1000, CV-76-57 (Me. Super. Ct., Cum. Cty., Nov. 15, 1977 ("Westbrook Gardens" complex).

Some subsidized housing qualifies for a charitable and benevolent exemption under 36 M.R.S.A. § 652(1)(A) and (C). See Chapter 7 for a discussion of "charitable and benevolent institutions."

Historic and Scenic Preservation. Article IX, § 8, sub § 5 of the Maine Constitution authorizes the Legislature to allow municipalities to reduce taxes on real estate if the landowner agrees to maintain the property in accordance with criteria adopted by the legislative body of the municipality for the maintenance of the historic integrity of important structures or to provide scenic view easements for significant vistas. Title 30-A M.R.S.A. § 5730 authorizes municipalities to raise or appropriate money to reimburse

taxpayers for a portion of taxes paid on real estate if the owner agrees to conduct the historic building maintenance or to provide the view easements as described above. The Maine Historic Preservation Commission is charged with providing assistance to municipalities in the preparation of such an ordinance. The Commission may be reached by calling 287-2132 or writing State House Station #65, Augusta, ME 04333.

Approved Subdivision Lots. Although the courts in Maine have not directly addressed the question, case law from other states suggests that an assessor may legally assign a higher value to buildable lots which are part of an approved subdivision. *See generally, Donlon v. Board of Assessors of Holliston,* 453 N.E.2d. 395, 403 (Mass. 1983). [For a case involving a challenge by the owner of one subdivision claiming that his lots were assessed higher than another, see *Rankin v. Town of South Thomaston,* CV-91-35 (Me. Super. Ct., Knox Cty., Apr. 28, 1992)].

Wetlands. Land which is totally or partially composed of wetland soils and/or vegetation may not be buildable in many cases, depending on the extent of the wetland and the plumbing, zoning or other state, local and federal land use regulations limiting or prohibiting any filling or development there. To the extent that these legal and physical limitations restrict or prevent the use of that land or render its use cost-prohibitive, the assessed value must be reduced accordingly. *Donlon, supra*, at 404. Wetlands are a classic example of the multiple factors an assessor must consider in determining "just value" under 36 M.R.S.A. § 701-A. (See the discussion of "just value" in Chapter 2 of this manual.)

Zoning Violation/Private Lawsuit. Case law from Maine and other states appears to support the conclusion that an assessor is not legally required to factor in the "cost of cure" or otherwise reduce the value of property where the property is the subject of a zoning ordinance violation and the municipality's court case against the owner is still unresolved as of April 1 (e.g., deck built in violation of the permit which was issued or built without a permit, which is physically constructed and being used pending the outcome of the prosecution). Likewise, an assessor does not appear to be required to take into account the existence of a private lawsuit that clouds the owner's title to the land in determining the just value for assessment purposes. *South Portland Associates v. City of South Portland,* 550 A.2d 363, 368 (Me. 1988); *Harris v. City of Portland,* CV-86-1297 (Me. Super. Ct., Cum. Cty., Feb. 1, 1989); *Appeal of Great Lakes Container Corporations,* 489 A.2d 134 (N. H. 1985); *Atlantic International Investment Corporation v. Turner,* 383 So.2d 919 (Fla. App. 1980); *Inmar Associates, Inc. v. Borough of Carlstadt,* 549 A.2d 38 (N. J. 1988); *Northville Industries Corp. v. Board of Assessors of Town of Riverhead,* 531 N.Y.S.2d 592, 594 (AD 2 Dept. 1988); *Reliable Electronic Finishing Co., Inc. v. Board of Assessors of Canton,* 573 N.E.2d 959, 960 (Mass. 1991); *Hoover v. State Board of Equalization,* 579 SW.2d 192, 195 (Tenn. 1979); *Town of Secaucus v. Damsil, Inc.,* 295 A.2d 8, 10 (N. J. 1972).

Property Divided by Town Boundary Line. Where a taxpayer's house lies on the boundary line, and partly in two municipalities, the entire house is taxable by the municipality in which "the most necessary and indispensable part of the house" is situated, in the absence of other, more controlling facts. *Judkins v. Reed,* 48 Me. 386 (1860).

Contiguous Lots and Lots Divided by a Road, Powerline or Right-of-Way. Title 36 M.R.S.A. § 708 requires assessors to "estimate and record separately the land value of each parcel of real estate." This does not forbid an assessor from combining several contiguous lots or parcels of land into one assessment, however, provided they are (1) owned or occupied by the same taxpayer and (2) used indiscriminately for the same purpose. This is true even if the lots are described in separate deeds. *Nason v. Ricker,* 63 Me. 381 (1873); *Greene v. Lunt,* 58 Me. 518 (1870); *Fickett v. Hohlfeld,* 390 A.2d 469 (Me. 1978); *Augusta v. Allen,* 438 A.2d 472 (Me. 1981); *Johnson v. Dedham,* 490 A.2d 1187 (Me. 1985).

Title 36 M.R.S.A. § 701-A imposes some limitations on an assessor's discretion to merge lots in specific situations. When an assessor is trying to establish the value of unimproved acreage which is in excess of an improved house lot, if the excess unimproved acreage is comprised of contiguous parcels or parcels divided by a road, powerline or right-of-way, the assessor may value the excess acreage as one parcel if: (1) each parcel is five or more acres; (2) the owner gives written consent to the assessor to value the parcels as one; and (3) the owner certifies that the parcels aren't held for sale and are not subdivision lots. This law does not appear to require an assessor to merge lots simply because the landowner has requested it. An assessor has the discretion to assess contiguous lots separately even if they are in excess of five acres and even if the owner consents to merger.

Shorefront Property; Island Property. For several Maine court cases involving the assessment of shorefront property and island property, see *Wesson v. Town of Bremen*, 667 A.2d 596 (Me. 1995); *Moser v. Town of Phippsburg,* 553 A.2d 1249 (Me. 1989); *Soley v. Town of Camden,* CV-90-10 (Me. Super. Ct., Knox Cty., Jan. 12, 1990); *Farrelly v. Town of Deer Isle,* 497 A.2d 302 (1979); *Goldstein v. Town of Georgetown*, 1998 ME 261, 721 A.2d 180; *Town of Southwest Harbor v. Harwood*, 2000 ME 213, 763 A.2d 115; *Forbes v. Town of Southwest Harbor*, 2001 ME 9, 763 A.2d 1193.

Assessing Methods

As noted in Chapter 2, Maine statutory and constitutional law requires all assessors to assess property according to its just value. Although 36 M.R.S.A. § 327 establishes minimum assessing standards that assessors must achieve, the Legislature has not enacted a law specifying the assessing methods that assessors must use to meet those standards. The courts in Maine consequently have shown great deference to assessors in their choice

of a method or combination of methods used to determine "just value" for the properties within their municipalities.

The three most commonly used appraisal techniques for determining the market value of real estate are: (1) the "comparative" or "market data" approach; (2) the "income" or "capitalization" approach; and (3) the "reproduction cost less depreciation" or "cost" approach. *Shawmut Inn v. Town of Kennebunkport,* 428 A.2d 384 (Me. 1981); *South Portland Associates v. City of South Portland,* 550 A.2d 363 (Me. 1988); *Moser v. Town of Phippsburg*, 553 A.2d 1249 (Me. 1989); *Northeast Empire Limited Partnership #2 v. Town of Ashland*, 2003 ME 28 *(case cite from April 2003 Supplement)*. Whether one of these techniques is more appropriate than another will depend on the particular circumstances of the property in question. For income property, the assessor must review each of these methods to determine which is most appropriate for the particular property.

In the "market data" approach, the assessor evaluates recent sales of comparable properties to arrive at an estimate of "market values" for the property being assessed. Under the "income" approach, the assessor attempts to estimate a property's market value through the capitalization of that property's anticipated income flow (i.e., estimate the value to purchase an income stream). This method is particularly reliable for certain types of income property, and its reliability can be increased by averaging income over a five-year period. The "cost less depreciation" approach depreciates the replacement or reproduction cost of a piece of property to determine its current market value.

The following cases dealt with the question of whether a particular assessment methodology was appropriate for the property in question: Northeast Empire Limited Partnership #2 v. Town of Ashland, 2003 ME 28 (wood-fired electricity generating facility) *(case cite from April 2003 Supplement)*; *Pepperman v. Town of Rangeley,* 1999 ME 157, 739 A.2d 851 (detached residential barn—"functional obsolescence"); *Town of Sanford v. J & N Sanford Trust,* 1997 ME 97, 694 A.2d 456 (shopping center—"lease fee value"); *Glenridge Development Co. v. City of Augusta,* 662 A.2d 928 (Me. 1995) (complex property—low income, multi-family apartment complex governed by HUD regulations and restrictions—"cost approach" as primary method substantiated by "income and expense" approach and "market" approach); *South Portland Associates v. City of South Portland,* 550 A.2d 363 (Me. 1988) (residential apartment complexes—stable, long-term, high volume rental history made them uniquely suitable for "income" approach and not suitable for "cost" approach); *Shawmut Inn v. Inhabitants of Town of Kennebunkport,* 428 A.2d 384 (Me. 1981) (valuing commercial, income-producing property by using the "cost of reproduction less depreciation" analysis, but then "correlating" that result by comparing it to the income approach); *Frank v. Town of Skowhegan,* 329 A.2d 167 (Me. 1974) (new shopping center—reproduction cost less depreciation).

Maine Revenue Service has various publications describing when and how these techniques should be used. Its staff is available by phone, letter, or field visit to assist assessors. (See Appendix 7 of this manual for a list of articles from the *Maine Townsman* relating to assessing methods and court cases.)

Exempt Real Property

For a discussion of which types of real property are exempt from property taxation, see Chapter 7.

Chapter 6

Assessing Personal Property

Assessing Personal Property

Definition of Personal Property

Personal property is defined in 36 M.R.S.A. § 601 as "all tangible goods and chattels wheresoever they are and all vessels, at home or abroad." "Chattels" is defined in *Ballentine's Law Dictionary* as "property which is movable and not so connected with the ground as to become a part of the real estate." The term includes wild animals in captivity or on animal farms.

There are two basic classes of personal property: intangible personal property and tangible personal property. Intangible personal property includes stocks, bonds, notes, mortgages, cash, bank deposits, accounts, credits, accrued interest, dividends, receivables, royalties and patent rights. This type of personal property is not subject to property taxation. Tangible personal property includes motor vehicles, livestock, furniture, jewelry, machinery and grain. Some tangible personal property is taxable and some is not. See Chapter 7 for a discussion of the exempt property.

Where Taxed and To Whom—General Rule

As noted in Chapter 2, 36 M.R.S.A. § 708 requires local assessors to locate and assess all taxable personal property. Assessors cannot arbitrarily decide not to assess any personal property or to assess some but not others.

Taxable personal property, whether located within or outside the State, normally must be taxed to the owner by the municipality in which he or she resides. 36 M.R.S.A. § 602. Any local assessors finding personal property in their municipality on April 1 which is not owned by a resident of that municipality, and which does not fall within one of the exceptions discussed below, should notify the municipality in which the owner resides, so that the assessors there may list the property for taxation. Otherwise, the property is likely to escape taxation.

In some cases, it is not the municipality in which the owner resides which is authorized to tax personal property. A discussion of these exceptions appears later in this chapter. Whichever municipality assesses the tax also sends the tax bill and collects and keeps the tax.

Residence Defined

General. In most cases, in order for a municipal assessor to tax personal property under § 602, it is essential to show that the owner is a resident of that municipality. A taxpayer can have only one legal residence at a time for tax purposes. *Gilmartin v. Emery,* 131 Me.

236, 160 A.874 (1932). "Residence" for tax purposes means place of domicile. 36 M.R.S.A. § 501(9). It ordinarily is a pure question of fact. *Mather v. Cunningham,* 105 Me. 326, 74 A.809 (1909). Assessors should base their determination of a person's intent to remain in a certain place on the facts in each case.

Change of Residence. A taxpayer asserting a change of residence has the burden of proving the change. In order to establish a new residence, three things must appear: (1) the abandonment of the residence the person already has; (2) the selection of and physical presence at a new location; and (3) the intention to stay in the new location and make it his or her principal home. *Gilmartin v. Emery, supra*; *Inhabitants of Stockton v. Staples,* 66 Me. 197 (1877). In one Maine court decision, it was held that where an inhabitant of A left that place on March 30 with the intention of residing in C, but on April 1 arrived at B, and the next day reached C, where he established his residence, for the purposes of taxation he was deemed an inhabitant of A on April 1 and liable to taxation there. *Littlefield v. Inhabitants of Brooks,* 50 Me. 475 (1862).

Residence of Corporations; Unincorporated Businesses. If the owner is a Maine corporation, its personal property generally is taxable where the corporation has its principal place of business (the corporate "residence"), if in the State. *City of Lewiston v. Tri-State Rubbish, Inc.,* 671 A.2d 955 (Me. 1996). The municipality which is legally the corporation's residence is listed on forms filed with the Secretary of State. 36 M.R.S.A. §§ 501(9), 602. If the owner is a business which is not incorporated, then the property generally would be taxed by the municipality in which the individual who owns the business resides. If the business has several owners each with different residences, then the municipality in which a particular owner lives would tax that owner's interest in the property. People who conduct business as a partnership, or sole proprietorship, or under an assumed name are required to file certain information with the municipal clerk. 31 M.R.S.A. §§ 1,2,4.

Exception to the General Rule

Mortgaged Personal Property. When personal property is mortgaged, pledged or conveyed with the seller retaining title for security purposes, the property should be taxed to the person who has it in his or her possession by the municipality in which that person resides (the "party in possession"). 36 M.R.S.A. § 604.

Deceased Persons. The personal property of a deceased person should be assessed to the personal representative by the municipality where the deceased person last resided. That method of assessment should continue until the personal representative gives notice to the assessors that the property has been distributed. If the deceased at the time of his or her death did not reside in the State, the personal property should be assessed to the personal representative by the municipality in which the property is located. Until a personal representative has been appointed, the personal property of a deceased person should be

assessed to the estate of the deceased (this is not the case for real estate) by the municipality in which he or she last resided, if in the state; otherwise, it should be assessed by the municipality in which the property is situated. The personal representative is liable for the tax once appointed. 36 M.R.S.A. § 605. *Inhabitants of Dresden v. Bridge,* 90 Me. 489 (1897); *City of Bath v. Reed,* 78 Me. 276 (1886).

Insolvent Person's Personal Property. If a person assessed for a personal property tax has made an assignment for the benefit of creditors, or has gone into receivership before the payment of the tax, the assignee or receiver must pay the personal property tax assessed from any money that has come into his or her hands in that capacity, to the extent of such money less the reasonable expense of administration. If such a payment is not made, the assignee or receiver shall be personally liable for the tax to the extent of the money which passed through his hands. 36 M.R.S.A. § 607.

Property in Bankruptcy. If a person or business owning property has filed for bankruptcy on or before April 1st, the property should be assessed in the name of the owner and the bankruptcy trustee. This method for designating the owner should be used until the municipality receives notice from the bankruptcy court that the property in question has been abandoned or that the owner and property have been discharged from the bankruptcy court's jurisdiction and that the case has been closed.

Equipment Tax. Machinery and other personal property brought into this State after April 1 and before December 31 by any person upon whom no personal property tax was assessed on April 1 in the State of Maine shall be taxed as other personal property by the municipality in which it is used for the first time in this State. 36 M.R.S.A. § 611.

A January 10, 1983 opinion by the Office of the Maine Attorney General concludes that this equipment tax can be imposed on any person upon whom a personal property tax was not imposed as of April 1 for the specific property in question*;* the mere fact that the same person paid personal property taxes on other personal property during that tax year does not exempt that person from paying an equipment tax on the equipment or machinery brought into the State after April 1 and before December 31. The Attorney General's opinion also concludes that the personal property in question does not need to be in actual use in order for it to be taxable; if the property is no longer in transit and has reached its final destination, that is enough. Only equipment or machinery brought into the State after December 31 and before April 1 escapes a tax under § 611.

When the assessors are informed by the owner or otherwise learn of the presence within the municipality of that personal property, the assessors must give notice in writing to the owner to furnish to the assessors a true and perfect list of the property within 15 days from the receipt of the notice. Except as otherwise provided, the provisions of 36 M.R.S.A. § 706 apply. (See Chapter 2 for a discussion.)

The assessors then assess a tax upon the property in question in the same manner as other property assessed for the same tax year. However, if the tax is paid within two months of its assessment, interest from the due date of taxes for the tax year does not apply.

Telecommunications Property. Telecommunications personal property owned or leased by a telecommunications business and used in the transmission of two-way interactive communications is subject to a personal property tax assessed by and payable directly to the State. 36 M.R.S.A. §§ 457, 458.

Exceptions to Place in Which Taxed

General. Title 36 M.R.S.A. § 603 sets forth a number of exceptions to the general rule in § 602 that personal property taxes are taxed to the owner in the place where the owner resides. Each of these exceptions is discussed below.

Personal Property Employed in Trade or in the Mechanic Arts. All personal property employed in trade, in the erection of buildings or vessels, or in the mechanic arts shall be taxed by the municipality in which it is so employed, except as indicated below, provided that the owner, his servant, subcontractor or agent occupies any store, storehouse, mill, wharf, landing place or shipyard there for the purpose of such employment. 36 M.R.S.A. § 603(1).

Most of the cases interpreting the words "employed in trade" have involved goods kept for local sale, or what generally is considered as "stock in trade." *Gendron Lumber Co. v. Inhabitants of Hiram,* 151 Me. 450, 120 A.2d 560 (1956); *Gower v. Inhabitants of Jonesboro,* 83 Me. 142, 21 A.846 (1891); *Inhabitants of Leeds v. Maine Crushed Rock and Gravel Co.,* 127 Me. 51, 141 A.73 (1928); *Machias Lumber Co. v. Inhabitants of Machias,* 122 Me. 304, 119 A.805 (1923); *Inhabitants of New Limerick v. Watson,* 98 Me. 379, 57 A.79 (1903); *Inhabitants of Peru v. Estate of Charles Forster,* 109 Me. 226, 83 A.670 (1912); *Inhabitants of Bradley v. Penobscot Chemical Fibre Co.,* 104 Me. 276, 71 A.887 (1908). However, stock in trade/inventory now is exempt from taxation under 36 M.R.S.A. § 655. The most common situations in which this section of the law now comes into play involve logging operations, construction businesses or similar companies which store equipment in a municipality other than the one where the business has its corporate residence.

Liquefied petroleum gas installations together with tanks or other containers used in connection with them are considered to be "personal property employed in trade," according to 36 M.R.S.A. § 603(l)(A).

The phrase "employed in the mechanic arts" also has been interpreted in several court decisions. Machinery for excavating sand and rock for sale has been held not used in the

mechanic arts and therefore not taxable in the municipality where used. To make an article "manufactured," it must result from a mechanical or manual process which turned one article into "a new and different article with a distinctive name, character or use." *Leeds v. Maine Crushed Rock and Gravel Co.,* 127 Me. 51, 141 A.73 (1928). Another case held that machinery used to prepare hot mix was used to produce a new and different article and so was taxable in the town where it was used. *Buckley v. Northeastern Paving Corp.,* 161 Me. 330, 211 A.2d 889 (1965). The two cases are compatible, the difference being the nature of the product which resulted from the use of the machinery in question. Personal property employed in the making of bricks would be taxable under this paragraph as employed in "the mechanic arts." *Leeds v. Maine Crushed Rock and Gravel Co., supra; Wellington v. Inhabitants of Belmont,* 164 Mass. 142 (1895).

The word "occupies" as used in § 603(l) means having control in whole or in part or having a special right to use. *Inhabitants of Georgetown v. Hanscome,* 108 Me. 131, 79 A.379 (1911). "Occupancy" requires a "fixed, exclusive and long-term interest." *Town of Cherryfield v. Rennebu,* AP-97-07 (Me. Super. Ct., Wash. Cty., April 8, 1998).

Under § 603(1) the employment of the property in trade, in the erection of buildings or vessels, or in the mechanic arts, and the owner's occupation of a store, mill, wharf, etc., are the distinct facts that must exist to make the property taxable. In such circumstances, property located somewhere in a municipality is taxable by that municipality, even though it is not moved to the store, mill, wharf or other location until after April 1. *Georgetown v. Hanscome, supra.*

It has been held that the term "mill" as used in the statute means the building containing the machinery, not the machinery itself. *Inhabitants of Norway v. Willis,* 105 Me. 54, 72 A.733 (1908); *Leeds v. Maine Crushed Rock and Gravel Co.,* 127 Me. 51, 141 A.73 (1928). It also has been held that a person does not become liable to taxation as the occupant of a sawmill in a municipality by hiring logs to be sawed at the mill. *Campbell v. Inhabitants of Machias,* 33 Me. 419 (1851).

A person does not become liable to taxation as the occupant of a wharf by paying for wharfage, where he has no exclusive right to the use of the wharf. *Creamer v. Inhabitants of Bremen,* 91 Me. 508, 40 A.555 (1898); *Campbell, supra; Stockwell v. Inhabitants of Brewer,* 59 Me. 286 (1871). But if a person leasing a wharf has an exclusive right to the use of the wharf, or a part of it, he "occupies" the wharf within the meaning of the statute. *Desmond v. Inhabitants of Machiasport,* 48 Me. 478 (1861).

Land abutting water, from which water shipments can be made and leased for that purpose, with privileges of piling lumber, is a "landing place" within the meaning of the statute. *Georgetown v. Hanscome,* 108 Me. 131 (1911).

Cargo Trailers. According to § 603(1-A), cargo trailers must be taxed by the municipality in which they are "primarily located" on April 1st, even if not present there on April 1st. "Primary location" means where the trailer usually is based and where it regularly is returned for repairs, supplies and activities related to its use.

Portable Mills, Store and Office Fixtures and Furniture, Professional Libraries and Apparatus, Coin-Operated Devices, Camper Trailers, Transmitting Equipment. Certain items of personal property are taxed in the place where they are situated because of their nature. Section 603(2) lists these items of personal property as follows:

> 603(2)(a)—Portable mills.
> 603(2)(b) —All store fixtures, office furniture, fixtures and equipment. Regarding the issue of whether pagers may be taxed as office equipment, see *Summit Mobile Radio Co. v. City of Portland and City of Auburn,* CV-80-59 (Me. Super. Ct., Andro. Cty., Dec. 2, 1981). Dumpsters owned by a resident solid waste management company and placed on its customers' premises in various municipalities are taxed in the municipality in which the company's principal place of business is located, and not at the situs of each dumpster; a dumpster is not "equipment" for purposes of this section, which is intended to include "office equipment." *City of Lewiston v. Tri-State Rubbish, Inc.,* 671 A.2d 955 (Me. 1996).
> 603(2)(c)—Professional libraries, apparatus, implements and supplies. The Maine Supreme Judicial Court has held that mobile magnetic resonance imaging (MRI) units are "professional apparatuses" for purposes of this provision and so are taxed where situated. *Mobile Imaging Consortium v. City of Portland,* 1998 ME 15, 704 A.2d 415.
> 603(2)(d)—Coin-operated vending or amusement devices.
> 603(2)(e)—All camp trailers as defined in 36 M.R.S.A. § 1481. However, camp trailers in certain instances are subject to an excise tax. 36 M.R.S.A. §§ 1482 and 1484. (Before making an assessment on a camp trailer, check with the excise tax collector to determine whether an excise tax has been paid, making the owner eligible for an exemption under 36 M.R.S.A. § 1485.)
> 603(2)(f)—Television and radio transmitting equipment.

Personal Property Owned by Nonresidents of Maine. Personal property that is within the State and owned by persons residing out of the State must be taxed either to the owner, or to the persons having possession, or to the person owning or occupying any store, storehouse, shop, mill, wharf, landing, shipyard or other place where the property is housed or kept, by the municipality in which it is located. *Jordan-Milton Machinery, Inc. v. City of Brewer,* 609 A.2d 1166 (Me. 1992) (New Hampshire corporation is not treated as a Maine resident for purposes of taxation just because it is authorized to do business in Maine); 36 M.R.S.A. § 603(3). (See Chapter 7 for a discussion of exempt property owned by nonresidents.)

Guardianship Property. Personal property belonging to minors under guardianship must be taxed to the guardian by the municipality in which the guardian resides. The personal property of all other persons under guardianship must be taxed to the guardian by the municipality in which the ward resides. 36 M.R.S.A. § 603(6).

Partnership Property. Personal property of partners in business, when subject to taxation under the provisions of 36 M.R.S.A. § 603(l) and (2), may be taxed to the partners jointly under their partnership name. In such cases they will be jointly and severally liable for the tax. 36 M.R.S.A. § 603(7).

Ownership Unknown. Personal property owned by persons unknown must be taxed to the person having the property in possession by the municipality in which that person resides. A lien is created on the property in behalf of the person in possession, which he or she may enforce against the owner for the repayment of all sums paid by the person in possession. 36 M.R.S.A. § 603(8).

Personal Property of Certain Corporations. Except as provided in 36 M.R.S.A. § 603(l) and (10), the personal property of manufacturing, mining, smelting, agricultural and stock raising corporations, and corporations organized for the purpose of buying, selling and leasing real estate must be taxed to the corporation or to the persons having possession of such property by the municipality in which it is located. 36 M.R.S.A. § 603(9).

Mining Company. Tangible personal property must be taxed at the mine site by the municipality in which the mine site is located if the property is owned, leased or otherwise subject to the possessory control of a mining company and is en route to or from, being transported to or from, or destined to or from a mine site. Except as otherwise provided, tangible personal property leased to a mining company must be taxed by the municipality in which the property is situated. 36 M.R.S.A. § 603(10).

Information Needed to Locate and Tax Personal Property and Assessment Methodologies

General. For suggestions regarding what to tax and how to locate personal property, see Appendix 7 for a list of *Maine Townsman* articles on assessing issues. Regarding what assessment methodology is most appropriate for a particular type of property, assessors should consult with Maine Revenue Services. See also Chapter 2 and Appendix 7 of this manual.

Computers. In a case involving the assessment of electronic production equipment, such as computers, a York County Superior Court upheld an abatement granted by the County Commissioners because the court found that the town's "assessment methodology was

manifestly wrong." The town's practice was to take the acquisition cost of the property and then reduce the tax value by 10% per year down to a minimum value of 30% of the acquisition costs. The taxpayer argued that this was inappropriate for specialized electronic production equipment which loses value more quickly. The taxpayer claimed that the town should use the same depreciation range as the IRS uses, a position with which the court disagreed because it is "not necessarily designed to determine the 'just value' of property." However, the court did find that this evidence, in combination with expert testimony that the equipment in question had dropped in value, that this kind of equipment depreciates more quickly than personal property as a whole, and that the cost of new comparable equipment is less than the acquisition cost of the property in question, provided a reasonable basis on which the County Commissioners could conclude that the taxpayer's equipment had been substantially overvalued. The court acknowledged that the taxpayer had not provided an exact value for the property but observed that tax assessment is an "inherently inexact" procedure. It found that the taxpayer's methodology was "sufficiently precise to allow the Commissioners to utilize it if they wished." *Town of South Berwick v. Roaring Brook Consultants, Inc*., CV-92-33 (Me. Super. Ct., Yor. Cty., March 4, 1993).

For a discussion of leased computer equipment and the extent to which the rental income generated and the low resale value of the equipment are factors in determining the just value of the equipment, see *IBM Credit Corp. v. City of Bath,* 665 A.2d 663 (Me. 1995).

Exempt Personal Property

See Chapter 7 for a discussion of what personal property is exempt from property taxation.

Description of Personal Property

It is important for the assessor to describe personal property with some detail in preparing the valuation book and supporting records if it is property against which the tax collector might eventually want to record a lien with the Office of the Secretary of State Corporation's Bureau, UCC Division; the description must meet the requirements for UCC filings in Title 11, Article 9-A. Such detailed descriptions will also assist taxpayers seeking reimbursement under the Business Equipment Tax Reimbursement Program ("BETR") (see discussion below). For additional discussion of descriptions, see Chapter 8.

Business Equipment Tax Reimbursement Program (BETR)

The following discussion is taken from Maine Revenue Services "Basic Course 2" (2002 ed.) materials:

"The personal property tax paid on eligible and qualified business property first placed in service in Maine after April 1, 1995 may be reimbursed for up to 12 years by the State Tax Assessor upon proper application of a taxpayer. (36 M.R.S.A. § 6651 et seq.) Eligible property must be either new property or used property coming from outside of Maine and includes:

a) Qualified business property. (See below)
b) Construction in progress after April 1, 1995.
c) Repair and replacement parts, additions, accessions and accessories to other qualified business property. (36 M.R.S.A. § 6651 (2)).

'Qualified business property' means property used or held exclusively for a business purpose and subject to an allowance for depreciation; or, in the case of construction in progress or inventory parts, would be subject to an allowance for depreciation when placed in service. (36 M.R.S.A. § 6651 (3)).

'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, or 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. (36 M.R.S.A. § 6651 (3)).

Other property excluded from eligibility for reimbursement:

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

2. 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.)

3. A cogeneration facility is eligible for reimbursement on that portion of property taxes paid which is attributable to direct usage by a manufacturing facility.

As a general rule property entitled to exemption as a qualifying pollution abatement facility (36 M.R.S.A. § 656 (1) (E)) will not qualify for the program.

Any business taxpayer paying tax on eligible property placed in service after April 1, 1995 is entitled to a reimbursement for the property tax paid. The reimbursement claim must be filed with the State Tax Assessor beginning any time after the last property tax in

a calendar year has been made, but no later than April 1 of the following calendar year for property taxes paid during the previous calendar year for which no reimbursement pursuant to this chapter has been made. (36 M.R.S.A. § 6654). Claims and statements of the assessor shall be on forms prescribed by the State Tax Assessor and made available with instructions to all taxpayers and taxing jurisdictions.

Note: Taxpayers generally may not receive simultaneous reimbursement for the same property under both the BETR program and the Investment Tax Credit or the High–Technology Investment Tax Credit. The statute requires the eligibility period under the BETR program to be reduced, from a maximum of 12 years, by one year for every year BETR qualified equipment was included in the investment tax credit base or the high-technology investment tax credit base."

Chapter 7

Exemptions

Exemptions

The General Rule

The general rule of property taxation is that taxation is the rule and exemption the exception. *City of Lewiston v. Marcotte Congregate Housing, Inc.,* 673 A.2d (Me. 1996); *Episcopal Camp Foundation, Inc. v. Town of Hope,* 666 A.2d 108 (Me. 1995). Certain classes of property are exempted by law from all taxation and other classes are only partially exempt. However, in order for any item of property to be exempt from taxation, it must come strictly within the purpose and intent of a statute granting an exemption. The person claiming the exemption has the burden of proving that the property falls clearly within the statute. *Episcopal Camp Foundation v. Town of Hope, supra*; *Silverman v. Town of Alton,* 451 A.2d 103 (Me. 1982); *Pentecostal Assembly of Bangor v. Maidlow,* 414 A.2d 891 (Me. 1980); *Green Acre Baha'i Institute v. Town of Eliot,* 150 Me. 350, 110 A.2d 581 (1954); *Owls Head v. Dodge,* 151 Me. 473, 121 A.2d 347 (1956); *Holbrook Island Sanctuary v. Town of Brooksville,* 161 Me. 476, 214 A.2d 660 (1965); *Advanced Medical Research Foundation v. Town of Cushing,* 555 A.2d 1040 (Me. 1989). The legislative intention to exempt must be expressed in clear and unambiguous language. *Portland Terminal Co. v. Hinds,* 134 Me. 434, 187 A.716 (1936). Just as with taxable status, exempt status is determined by an analysis of ownership and conditions existing on April 1 of the tax year in question. *American Martial Arts Foundation v. City of Portland,* 635 A.2d 962 (Me. 1993).

Municipalities Cannot Vote Exemptions

A municipality's legislative body cannot vote an exemption from taxation. *Thorndike v. Inhabitants of Camden,* 82 Me. 39, 46, 18 A.95 (1889); *Brewer Brick Co. v. Inhabitants of Brewer,* 62 Me. 62 (1873); *Inhabitants of Brownville v. U.S. Pegwood and Shank Co.*, 123 Me. 379, 123 A.170 (1924). Nor can the legislative body abate a tax. *Thorndike v. Camden, supra; City of Rockland v. Farnsworth,* 93 Me. 178, 44 A.681 (1899); *Inhabitants of Brownville v. U.S. Pegwood and Shank Co., supra*; *Young v. Johnson,* 161 Me. 64, 207 A.2d 392 (1965). If the legislative body votes an exemption or an abatement on certain property, the vote is not binding on the assessors. The assessors should not allow an exemption or abatement unless there is statutory authority for doing so.

Property Owned by Federal, State, or Local Government Entities

Property Owned by the United States. Taxation of the property of the United States generally is prohibited under the Constitution and laws of the United States. Such properties as army camps, veterans' hospitals, lighthouses, custom houses, post offices, arsenals and other public buildings together with the lands upon which the buildings are located, and forest preserves and national parks are exempt from taxation. 36 M.R.S.A.

§ 651(1)(A); 1 M.R.S.A. § 16. However, property merely rented by the United States is not exempt from taxation; it must be owned outright to be exempt. *McCullough v. Maryland,* 4 Wheat. (U.S.) 316 (1819).

The property of some federal corporations is taxable by virtue of provisions in the acts incorporating them. In other instances, where federally owned property is not taxable, provision has been made for payments in lieu of taxes.

Property Owned by the State of Maine or Its Independent Agencies. All property owned by the State of Maine, such as State buildings, armories or institutions, is exempt from taxation. 36 M.R.S.A. § 651(1)(B). Property merely rented by the State is taxable, however. The University of Maine is not included under this exemption; instead, it is exempt as a "literary institution" under § 652(l)(B). 1963-64 Atty. Gen. Rep. 193; *Inhabitants of Orono v. Sigma Alpha Epsilon Society,* 105 Me. 214, 221, 74 A.19 (1909). (See discussion of "literary institutions" later in this chapter.) A statutory exemption granted by 10 M.R.S.A. § 980(3) to the Finance Authority of Maine (FAME) doesn't apply to assessed property that it acquired after April 1 of the tax year in question; it becomes operable the following April 1. *Finance Authority of Maine v. City of Caribou,* 1997 ME 95, 694 A.2d 913. The private and special act of the Maine Legislature which created the Maine Turnpike Authority includes a property tax exemption for the Authority. P&S 1941, Chapter 69.

Property Owned by State of New Hampshire. Real estate owned by the Water Resources Board of the State of New Hampshire and used for the preservation of recreational facilities in this State is exempt. 36 M.R.S.A. § 651(1)(B-1).

Property Owned by Public Municipal Corporations Located Within Corporate Limits. The property of any public municipal corporation of the State of Maine used for a public purpose, if located within the corporate limits and confines of that public municipal corporation, is exempt from taxation. 36 M.R.S.A. § 651(1)(D). *Portland Water District v. Town of Standish,* 1999 ME 161, 740 A.2d 564; *Town of Embden v. Madison Water District,* 1998 ME 154, 713 A.2d 328; *Inhabitants of Boothbay v. Inhabitants of Boothbay Harbor,* 148 Me. 31, 88 A.2d 820 (1952); *Owls Head v. Dodge*, 151 Me. 473, 121 A.2d 347 (1956); *Inhabitants of Camden v. Camden Village Corp.,* 77 Me. 530 (1885). Land owned by one municipality within the confines of another is not exempt from taxation under this section. *Greaves v. Houlton Water Co.,* 140 Me. 158, 34 A.2d 693 (1943); *City of Bangor v. City of Brewer,* 142 Me. 6, 45 A.2d 434 (1946). The term "public municipal corporation" includes counties, cities, towns, plantations, village corporations, and public water, light and power, and sewer districts.

A water district which fits the definition of a "standard district" under 35-A M.R.S.A. § 6402 (2) is considered a public municipal corporation for the purposes of § 651. 35-A M.R.S.A. § 6415.

Property Owned by Public Municipal Corporations Located Outside Corporate Limits. The pipes, fixtures, hydrants, conduits, gatehouses, pumping stations, reservoirs, and dams, used only for reservoir purposes, of a public municipal corporation engaged in supplying water, power or light, if located outside the limits of the public municipal corporation, are exempt. 36 M.R.S.A. § 651(l)(E). *Inhabitants of Whiting v. Inhabitants of Lubec,* 121 Me. 121, 115 A.896 (1922); *Greaves v. Houlton Water Co.,* 140 Me. 158, 34 A.2d 693 (1943) and 143 Me. 207, 59 A.2d 217 (1948). This includes dams used to create reservoirs both for drinking water and for hydroelectric power generation. *Town of Madison v. Town of Norridgewock,* 544 A.2d 317 (Me. 1988). The exemption in § 651(1)(E) must be read in light of modern technology to include all property that is an essential component of modern water treatment facilities. *Portland Water District v. Town of Standish, supra.; Town of Embdem v. Madison Water District, supra.* 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 the public municipal corporation, also are exempt. 36 M.R.S.A. § 651 (1)(G); 30-A M.R.S.A. § 5413. *Town of East Millinocket v. Town of Medway,* 486 A.2d 739 (Me. 1985). Note that except for these two situations and municipally owned airports, described below, all real estate and tangible personal property of any public municipal corporation which is located outside the limits of that public municipal corporation is taxable. *Whiting v. Lubec, supra.* For example, a gravel pit owned by one town and located in another town is taxable by that other town.

Property Leased by School Administrative Unit. Title 20-A M.R.S.A. § 4001(3)(C) provides that "(a) school administrative unit may lease facilities and other property. Leased property shall be considered property of the unit in all respects." To the extent that school property is exempt under 36 M.R.S.A. § 651, the property that it leases is exempt also.

Airports and Landing Fields. All airports and landing fields and the structures erected thereon or contained therein of a public municipal corporation, whether located within or without the limits of the public municipal corporation, are exempt. If any of the structures or land within the airport are used for other than airport or aeronautical purposes, that portion is not entitled to exemption. Any public municipal corporation which is required to pay taxes to another public municipal corporation under this paragraph with respect to any airport or landing field must be reimbursed by the county where the airport is situated. 36 M.R.S.A. § 651(1)(F). *Marshall v. Inhabitants of Town of Bar Harbor,* 154 Me. 372 (1959).

Exemptions Granted Under the Articles of Separation. When Maine became a state, the Articles of Separation (the document approving the separation of Maine from Massachusetts) provided that all lands previously granted by Massachusetts to any religious, literary or charitable corporation or society would be free from taxation, as long as those lands continued to be owned by that corporation. R.S. 1883, p.1005. *Lapish v.*

Wells, 6 Me. 175 (1829); *Inhabitants of Gorham v. Trustees of the Ministerial Fund,* 109 Me. 22 (1912). Such property still is exempt. 36 M.R.S.A. § 651(1)(C).

Statutory Exemptions Related to a Specific Corporation or Other Legal Entity. If a public or private corporation or legal entity was created pursuant to a specific general statute or by a Private and Special Act of the Maine Legislature, there may be a provision of the applicable general or special law granting exempt status to some or all of the entity's property (e.g., *Passamaquoddy Water District v. City of Eastport and Town of Perry,* 1998 ME 94, 710 A.2d 897, where the Private and Special Act creating the district expressly stated that the district was not governed by § 651 and its property was taxable).

Some general statutes which provide exemptions for certain real and personal property are listed below:

>> municipal transportation districts (30-A M.R.S.A. § 3511)
>> municipal urban renewal authorities (30-A M.R.S.A. § 5114(2))
>> Maine Health Facilities Authority (22 M.R.S.A. § 2067)
>> Soil and Water Conservation Districts (12 M.R.S.A. § 6(3))
>> municipal development districts (30-A M.R.S.A. § 5258)
>> sanitary districts (38 M.R.S.A. § 1064)
>> refuse disposal districts (38 M.R.S.A. § 1704)
>> revenue producing municipal facilities (30-A M.R.S.A. § 5413)
>> Maine Municipal and Rural Electrification Cooperative Agency (35-A M.R.S.A. § 4135)
>> property owned or leased by the State, municipalities, or organizations of the State military forces used for military purposes (37-B M.R.S.A. § 306)
>> non-profit cemetery corporations owning lands appropriated for public cemeteries (13 M.R.S.A. § 1301) (*Riverside Cemetery Association v. City of Lewiston,* CV-96-316 (Me. Super. Ct., Andro. Cty., Dec. 12, 1997).

Property of Institutions and Organizations

Benevolent and Charitable Institutions

** **Statutory Requirements.** Title 36 M.R.S.A. § 652(1)(A) establishes a multi-part test to determine the tax exempt status of real and personal property owned by "charitable and benevolent institutions." The property must be (1) owned and occupied or used (2) solely for their own purposes by (3) a benevolent and charitable institution (4) incorporated in the State of Maine, and the institution must be (5) organized and conducted exclusively for benevolent and charitable purposes. *Silverman v. Town of Alton,* 451 A.2d 103 (Me. 1982); (ownership of equitable title under trust held insufficient); *Christian Schools Inc. v. Town of Rockport,* 489 A.2d 513 (Me. 1985)

(mortgage-like interest did not defeat claim of ownership for purposes of exemption); *City of Lewiston v. Salvation Army,* 1998 ME 98, 710 A.2d 914. None of these institutions should be denied an exemption because of the source from which its funds are derived or because of a limitation on the classes of persons for whose benefit the corporation uses its funds. 36 M.R.S.A. § 652(l)(A), (C), and (J). *Maine AFL-CIO Housing Development Corp. v. Town of Madawaska,* 523 A.2d 581 (Me. 1987); *Credit Counseling Centers, Inc. v. City of South Portland*, 2003 ME 2 (organization provided a valuable service to both creditors and debtors, but not entitled to a charitable exemption because of the magnitude of the amounts collected for creditors; not conducted exclusively for charitable purposes and revenue generated for creditors not purely incidental to a dominant charitable purpose) *(last case citation from April 2003 Supplement).*

Section 652(1)(A) expressly includes the following entities in the definition of "charitable and benevolent":

> "nonprofit nursing homes and nonprofit boarding homes and boarding care facilities licensed by the Department of Human Services pursuant to Title 22, chapter 1665 or its successor, nonprofit community mental health service facilities licensed by the Commissioner of Behavioral and Developmental Services pursuant to Title 34-B, chapter 3 and nonprofit child care centers incorporated by this State as benevolent and charitable institutions. For the purposes of this paragraph, "nonprofit" means a facility exempt from taxation under Section 501(c)(3) of the Code." Section 652(1)(C)(6) and (7) impose certain limitations on exemptions granted to organizations providing federally subsidized residential rental housing.

This statute previously contained a limitation on the amount of exemption available to "any charitable and benevolent institution which is in fact conducted or operated principally for the benefit of persons who are not residents of Maine." However, this provision (the former § 652 (1)(A)(1)) was held unconstitutional by the U.S. Supreme Court in *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Me*., 117 S. Ct. 1590 (1997), finding that it violated the "dormant Commerce Clause." The Maine Legislature subsequently repealed this provision. A question which remains is whether the "dormant Commerce Clause" is also violated by the requirement that a corporation must be incorporated in Maine in order to qualify for an exemption as charitable and benevolent. Some municipal attorneys are advising local assessors not to deny an exemption on the basis that the corporation isn't incorporated in Maine, as long as it is incorporated somewhere and has been authorized by the Secretary of State's office to do business in Maine pursuant to 13-B M.R.S.A. Chapter 12. This approach is designed to avoid a lawsuit claiming a violation of the taxpayer's federal

rights under 42 U.S.C § 1983. Consult local counsel before deciding a case on the basis of where a business is incorporated.

** **Definition of "Charitable" and "Benevolent."** The Maine Supreme Judicial Court has established the following rule for analyzing whether an organization is eligible for a "charitable and benevolent" exemption: "in each situation where exemption is claimed, there must be a careful examination to determine whether in fact the institution is organized and conducting its operation purely for benevolent and charitable purposes in good faith, whether there is any profit motive revealed or concealed, whether there is any pretense to avoid taxation, and whether any production of revenue is purely incidental to a dominant purpose which is benevolent and charitable. When these questions are answered favorably to the petitioner for exemption, the property may not be taxed." *Maine AFL-CIO, supra, citing Green Acre Baha'i, supra; Maine Baptist Missionary Convention v. City of Portland,* 65 Me. 92 (1876); *City of Bangor v. Rising Virtue Lodge,* 73 Me. 428 (1882). The word "charity" has been interpreted in a number of Maine cases. *Episcopal Camp Foundation, Inc. v. Town of Hope, supra; Maine Baptist Missionary Convention v. City of Portland, supra*; *City of Bangor v. Rising Virtue Lodge, supra.* The essence of a "charitable" act is to give without concern for compensation. A charitable organization is generally one that provides a service for the benefit of the public that the community would otherwise be obligated to provide. Charitable purposes include "the relief of poverty, the advancement of education, the advancement of religion, the promotion of health, governmental or municipal purposes, and other purposes the accomplishment of which is beneficial to the community." *Restatement of the Law of Trusts*, § 368, p.1140. The fact that the organization's clientele pays for a portion of the services received doesn't automatically disqualify the organization from being "charitable." *Maine AFL-CIO Housing v. Town of Madawaska, supra*. "Benevolent" has been interpreted to be synonymous with "charitable" and defines and limits the nature of the charity intended. *Holbrook Island Sanctuary v. Town of Brooksville, supra; Maine AFL-CIO, supra.; Credit Counseling Centers, Inc., supra.(case citation from April 2003 Supplement).*

** **Actual and Dominant Use; Effect of Incidental Uses.** It is important to note that this exemption applies only when ownership and occupancy or use for benevolent and charitable purposes appear together. Mere ownership alone is insufficient. The use for its charitable purposes must be dominant, not an incidental purpose such as investment. The use also must be actually established or definitely planned or the property must be clearly "committed" to that use as of April lst, not one that is merely possible. *Curtis v. Odd Fellows,* 99 Me. 356, 59 A.518 (1904); *Christian Schools, Inc., supra; Camp Emoh Associates v. Town of Lyman,* 132 Me. 67, 166 A.59 (1933); *Ferry Beach Assoc. of Universalists v. City of Saco,* 127 Me. 136, 142 A.65 (1928) and 136 Me. 202, 7 A.2d 428 (1939); *Alpha Rho Zeta of Lambda Chi Alpha, Inc. v. Inhabitants of City of Waterville,* 477 A.2d 1131 (Me. 1984); *Advanced Medical*

Research Foundation v. Town of Cushing, 555 A.2d 1040 (Me. 1989); *American Martial Arts Foundation v. City of Portland,* 635 A.2d 962 (Me. 1993).

Even if property is used only seasonally, it still may qualify for an exemption as long as the dominant purpose is benevolent and charitable. The incidental production of revenue will not defeat the exemption. Nor should the exemption automatically be denied because others are allowed to use part of the property occasionally for rent or for free because the organization uses part of the property for other purposes, as long as the other use doesn't interfere with the general charitable use as the dominant use and is reasonably incidental to it. Determining whether a use is incidental to the charitable use or whether it has become a separate dominant use is a factual judgment call, and not often an easy one to make (e.g., a restaurant run by a museum on the same property). *Alpha Rho Zeta v. City of Waterville, supra*; *Green Acre Baha'i Institute v. Town of Eliot,* 150 Me. 350, 193 A.2d 564 (1954); *State YMCA v. Town of Winthrop,* 295 A.2d 440 (Me. 1972); *Lewiston v. All Maine Fair Association,* 138 Me. 39 (1941); *Ferry Beach Park Association of Universalists v. City of Saco, supra; Camp Emoh, supra; Calais Hospital v. City of Calais,* 138 Me. 234 (1942); *Curtis v. Androscoggin Lodge, NO. 24, I.O.O.F.,* 99 Me. 356, 59 A.518 (1904). Compare these cases with *City of Lewiston v. Marcotte Congregate Housing, supra*.

** **Property Held in Reserve.** Property owned by a charitable organization that is used for or held in reserve for a purpose reasonably incidental to the use of the main property is also exempt. *Maine Medical Center v. Lucci*, 317 A.2d 1 (Me. 1974) (a hospital parking garage); *Osteopathic Hospital of Maine v. City of Portland*, 139 Me. 24, 26 A.2d 641 (1942) (adjacent property owned by the hospital was exempt because hospital had definite plans to use for future expansion, it helped provide a quiet setting, and land was currently used by patients and employees for walks); *Town of Poland v. Poland Spring Health Institute, Inc.,* 649 A.2d 1098 (Me. 1994). *Compare, Advanced Medical Research Foundation v. Town of Cushing*, 555 A.2d 1040 (Me. 1989).

** **The Marcotte Case.** The property must be used solely for charitable or benevolent purposes to qualify for an exemption. Where a portion of a building owned by a nonprofit corporation was leased to doctors and non-subsidized congregate housing tenants who paid full market value rent for their facilities, the entire building was not entitled to an exemption, not just the rented portion of the building. *City of Lewiston v. Marcotte Congregate Housing, Inc., supra*. For a discussion of a case between the Town of Falmouth and Maine Medical Center involving the exempt status of a multi-unit condominium office building, see the June 2000 issue of the *Maine Townsman*. The State Board of Property Tax Review ruled that the units owned by Maine Medical Center and used as "satellite departments" of the main hospital were exempt. Those owned by the hospital's non-profit realty corporation, MMC Realty, were taxable because that corporation acts like a for-profit company and doesn't offer charity.

Town of Falmouth v. MMC Realty, Maine State Board of Property Tax Review, Docket 2000-001, Nov. 14, 2000.

Since the *Marcotte* case was decided, assessors have raised questions about situations where a non-profit charitable corporation owns a single parcel with multiple buildings and leases some of the buildings or building space and accompanying land to other organizations that are not charitable. The question is whether the holding in *Marcotte* requires the assessment of the entire parcel and all building spaces or whether the land and building spaces used by the charitable owner may still be granted an exemption while taxing the rest on a "pro-rata" basis. There is no clear answer to this question under current case law and the current wording of § 652(1)(A). It is arguable that a strict reading of *Marcotte* requires an assessor to treat the whole parcel and all buildings on the parcel as taxable in this situation. However, many assessors, on advice from their municipal attorneys, are applying a "pro-rata" approach. They are treating the land and buildings actually used by the charitable corporation for its own purposes as tax exempt and assessing the corporation for the remaining land and buildings. (This practice was expressly required and authorized by statute prior to 1953. See Revised Statutes of 1883 and *Inhabitants of Foxcroft v. The Piscataquis Valley Campmeeting Assoc.,* 86 Me. 78 (1893).) Even in this situation, assessors are strictly applying the rule in *Marcotte* where a single building is being used in part by the charitable owner and in part by others that are not eligible for an exemption in their own right; they are assessing the entire building to the owner, as well as land related to the use of the building.

** **Land Preservation and Conservation Organizations.** One Maine court has held that a non-stock corporation that used property as a wildlife sanctuary for the purpose of benefiting wild animals was not "charitable" within the tax exemption statutes. The court found no benefit to the community or public because the purposes were not limited to prevention of cruelty to animals or research or disease control, and particularly because the corporation's prohibition on deer hunting was contrary to State game management policy. *Holbrook Island Sanctuary v. Town of Brooksville, supra.* Whether the Maine Supreme Court would reach the same conclusion today is difficult to say. A Maine Superior Court justice has held that the Cushing Nature Center was not entitled to an exemption for two reasons: (1) it restricted access by clammers over its property, which is against public policy in the court's view, and (2) because of the availability of current use taxation under the Farm and Open Space Tax Law (36 M.R.S.A. § 1101-1121), land conservation cannot be considered a charitable purpose. *Cushing Nature and Preservation Center v. Inhabitants of Town of Cushing,* CV-99-059 (Me. Super. Ct., Knox Cty., Mar. 30, 2001). The Maine Supreme Judicial Court found that the limitation on clammers' access to the property did not, by itself, prevent the granting of the exemption. If a use is charitable, the owner need not allow all public uses in order to qualify for an exemption. The court noted that the Center had alleged that its property is used primarily for the charitable purpose of nature

education. The court declined to rule on whether land preservation for future public use, standing alone, is a charitable use, because the Center had not presented any facts in support of its claim that it engaged in this activity. The court acknowledged that the Center did submit evidence that its property was used to conduct nature education activities, but declined to rule on whether nature education was a charitable use. Instead the court remanded the case to the Superior Court to resolve factual disputes about the use of the property for nature and science education and whether the property was actually held for noncharitable investment or other noncharitable purposes. *Cushing Nature and Preservation Center v. Town of Cushing,* 2001 ME 149, 785 A.2d 342.

Several courts in the United States have held that nonprofit corporations such as The Nature Conservancy and The Trust for Public Land are charitable organizations. Some of those courts also have upheld claims by those organizations for property tax exemptions on lands that they own and manage, even though the only "use" of the property initially (or even indefinitely) is protection of flowers or wildlife habitat or a unique geological feature for the public's benefit and an act of dedication of the land for that purpose by the organization. (This assumes, of course, that such "use" falls with the scope of the organization's charitable purposes as outlined in its articles of incorporation.) *Turner v. Trust for Public Lands,* 445 So.2d 1124 (Fla. App. S. Dist. 1984); *Wildlife Preserves, Inc. v. Scopelliti,* 66 Misc.2d 611, 321 N.Y.S.2d 1004 (1971); *Santa Catalina Island Conservancy v. County of Los Angeles*, App., 178 Cal. Rptr. 708, 716 (1982). *Compare, The Nature Conservancy of New Hampshire v. Town of Nelson,* 221 A.2d 776, 779 (NH, 1966). In upholding such an exemption, one court observed that "the land in question serves the greatest public good if left in its natural state." *Scopelliti, supra.*

The benefit provided by a charitable organization to the public cannot be restricted by privately retained rights. *Holbrook Island Sanctuary v. Town of Brooksville, supra; The Nature Conservancy v. Town of Bristol,* 385 A.2d 39 (Me. 1978). If property owned by a charitable organization is subject to conditions imposed by a former owner that interfere with public use, no exemption should be granted. *Nature Conservancy v. Bristol, supra; Maine AFL-CIO, supra.*

** **Church Property; Religious Purpose.** Section 652(l)(G) governs the exemption available for church property. However, the fact that an organization may have a religious affiliation or purpose does not automatically defeat its claim that it is a charitable institution under § 652 (1) (A). *Salvation Army v. Town of Standish,* 1998 Me. 75, 709 A.2d 727; *City of Lewiston v. Marcotte Congregate Housing, Inc*., 673 A.2d 209, 212 (Me. 1996); *Episcopal Camp Foundation v. Town of Hope,* 666 A.2d 108 (Me. 1995*), Town of Poland v. Poland Spring Health Institute, Inc.,* 649 A.2d 1098 (Me. 1994); *Green Acre Baha'i Institute v. Town of Eliot,* 150 Me. 350, 111 A.2d 581 (Me. 1954). These cases effectively overruled earlier decisions holding that

a religious purpose didn't qualify as a charitable purpose. *Pentecostal Assembly of Bangor v. Maidlow,* 414 A.2d 891 (Me. 1980); *Gorham v. Trustees*, 109 Me. 22, 82 A.290 (1912); *Living Waters Inc. v. Town of Weston,* CV-82-211 and CV-82-255 (Me. Super. Ct., Aroost. Cty., May 30, 1986). (See additional discussion of exemptions for "religious organizations" later in this chapter.)

** **Educational Purpose; Museums; Art Galleries; Schools.** An "educational" purpose may be charitable and benevolent. *Episcopal Camp Foundation, supra.* This should be determined by looking at the organization's articles of incorporation and financial statements to see if the organization is run for profit, how it uses any revenue generated by its activities, and whether it provides a public benefit. The courts in other states generally have held that museums provide educational services. *Portsmouth Historical Society v. City of Portsmouth,* 197 A.2d 712, 713 (N.H. 1938); *Strohmeyer v. Rembrandt Corp.,* 168 So.242 (Fla. 1936); *Tappan Washington Memorial Corp., v. Margetts,* 75 A.2d 823 (N.J. 1950). For cases finding that an art gallery and a gift shop opened by nonprofit organizations were eligible for a tax exemption for charitable organizations, see *DuPage Art League v. Dept. of Revenue*, 532 N.E.2d 1116 (Ill. App. 2 Dist., 1988) and *Highland Park Women's Club v. Department of Revenue*, 564 N.E.2d 890 (Ill. App. 2 Dist. 1990). A school, college or similar educational facility generally will qualify for an exemption as a literary institution (see discussion below).

** **National Red Cross.** An opinion issued February 16, 1982 by the Maine Attorney General's Office concluded that the National Red Cross is an exempt organization under § 652(1)(A).

** **Other Requirements for "Charitable and Benevolent" Status.** In addition to being incorporated in Maine (or authorized to do business in Maine by the Secretary of State, as discussed earlier in this Chapter), being organized exclusively for charitable and benevolent purposes, and owning and occupying or using property solely for its own purposes, the organization must also meet several other requirements in order to quality for a charitable exemption. None of its officers, trustees, directors, or employees can receive money from the organization directly or indirectly, except as "reasonable compensation" for services connected with furthering the organization's purposes. *Salvation Army v. Town of Standish*, *supra; Poland v. Poland Spring Health Institute, supra*. All profits and proceeds from the sale of its property must be used exclusively for the organization's purposes. *Maine AFL-CIO Housing Development Corp. v. Town of Madawaska,* 523 A.2d 581 (Me. 1987). A financial statement for the previous year must be supplied at the assessors' request in as much detail as required by the assessors.

** **Information That Should be Submitted With Application for Charitable Exemption.** When presented with a request for a charitable exemption, the assessors

should ask for a copy of the property deed, a copy of the articles of incorporation (or the certificate to do business in Maine as a "foreign corporation" issued by the Secretary of State, if not incorporated in Maine), the bylaws of the organization, a detailed financial statement from the previous fiscal year, a copy of the IRS letter granting the organization federal tax exempt status (if any), a copy of the corporation's latest IRS 990 tax return form (which lists officers' salaries and donations received, among other things), and a description of how the property is being used to benefit the public. A federal tax exemption does not automatically mean the organization will quality for a property tax exemption, but the assessor may find the information helpful. The assessors should then study this information carefully and compare it with the list of statutory requirements which must be met. Never assume that an organization qualifies. Often there will be problems with the statement of purpose of the organization that will prevent the exemption. The organization then must decide whether to amend its statement of purpose and apply again next year. (See Appendix 5 for a sample application form for property tax exemption.)

Literary and Scientific Institutions. 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 under 36 M.R.S.A. § 652(l)(B). As with benevolent and charitable institutions discussed above, ownership and use must go together and the use for the institution's own purposes must be dominant and not incidental. *Inhabitants of Orono v. Sigma Alpha Epsilon Society,* 105 Me. 214, 74 A.19 (1909); *Inhabitants of Orono v. Kappa Sigma Society,* 108 Me. 320, 80 A.831 (1911); *Alpha Rho Zeta v. Waterville*, 477 A.2d 1131 (Me. 1984); *Trustees of Maine Central Institute v. Town of Pittsfield,* CV-94-117 (Me. Super. Ct., Som. Cty., Aug. 22, 1995). Unlike charitable institutions, literary and scientific institutions do not have to be incorporated in Maine to qualify. Nor must they qualify as both literary and scientific—either is enough. "Scientific" has been interpreted 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." Teaching scientific courses without more does not make an organization a scientific institution. *Hurricane Island Outward Bound v. Vinalhaven*, 372 A.2d 1043 (Me. 1977). Nor is a wildlife sanctuary necessarily a scientific institution. *Holbrook Island Sanctuary v. Town of Brooksville, supra.* However, even though an organization may not quality as "scientific," it still may be "charitable" and qualify under § 652(l)(A).

The term "literary" generally means "a university or other school" or "those institutions where the positive sciences are taught or persons eminent for learning associate for purposes connected with their professions." *Women's Literary Union v. Lochhead,* CV-76-366 (Me. Super. Ct., Andro. Cty., Mar. 6, 1976); *Skowhegan School of Sculpture and Painting v. Town of Madison,* CV-82-28 (Me. Super. Ct., Som. Cty., Feb. 28, 1985). As was noted above, an educational purpose does not automatically mean that an organization is "literary." Citing the definition of "literary" in Black's Law Dictionary, a Maine Superior Court justice found that a martial arts school did not qualify as a "literary

institution," even though it had an educational purpose. *American Martial Arts Foundation v. City of Portland, Board of Assessment Review*, AP-99-86 (Me. Super. Ct., Cum. Cty., May 31, 2002). *(last 2 sentences from April 2003 Supplement)*

Private schools with course offerings similar to a public school curriculum, universities and similar institutions traditionally have qualified for this exemption. However, there is little guidance in Maine case law regarding what qualifies as a "literary" institution and not much more from other states. E.g., *Detroit v. Detroit Commercial College,* 322 Mich. 142, 33 N.W.2d 737 (1948) (commercial college offering specialized business training program did not qualify as an "educational institution"); *Graphic Arts Educational Foundation, Inc. v. State,* 240 Minn. 143, 59 N.W.2d 841 (1953) (trade school offering training in crafts and printing industry did not qualify as a "seminary of learning.") Those institutions that fail to qualify here may be eligible for a charitable exemption.

The Maine Supreme Judicial Court has specifically held that property of the University of Maine is not exempt as State-owned property but is exempt property of a literary institution. *Orono v. Sigma Alpha Epsilon Society*, *supra.*

Section 652(l)(B) states that any building or part of a building used primarily for employee housing is taxable.

As with charitable institutions, literary and scientific institutions must also meet the requirements listed earlier regarding using profits, giving benefits to officers and employees, providing financial statements to the assessors, and owning, occupying or using property to provide residential rental housing. In order to judge whether an institution is literary or scientific, the assessors should request the same information as outlined above for charitable exemptions.

Agricultural Fair Association. No exemption should be allowed under § 652(l)(A) or (B) in favor of an agricultural fair association holding pari-mutuel racing meets unless it has qualified the immediately preceding year as a recipient of the "Stipend Fund" provided in 7 M.R.S.A. § 62 (for aid and encouragement to agricultural societies) 36 M.R.S.A. § 652(l)(C)(5).

Subsidized Housing. See the discussion of this issue in Chapter 5 under "Subsidized Housing" and earlier in this chapter under "Benevolent and Charitable Institutions." To the extent that some of the residents are paying "full market rental value for their quarters," the building probably wouldn't be exempt under 36 M.R.S.A. § 652(1)(A). *City of Lewiston v. Marcotte Congregate Housing, Inc.,* 673 A.2d 209 (Me. 1996).

Veterans' Organizations. The real estate and personal property owned and occupied by posts of the American Legion, Veterans of Foreign Wars, American Veterans of World War II, Grand Army of the Republic, Spanish War Veterans, Disabled American

Veterans and Navy Clubs of the U.S.A. are exempt if used solely by those organizations for meetings, ceremonials or instruction, including all facilities appurtenant to such use and used in connection with it. If any building is not used in its entirety for those purposes but is used in part for those and in part for other purposes, only the part used for the purposes listed above is exempt. The same requirements as outlined for charitable or benevolent institutions regarding use of profits, financial reports for the assessors, and benefits accruing to officers and employees apply to veterans groups covered by this section. 36 M.R.S.A. § 652(l)(E).

Chambers of Commerce. The real estate and personal property owned and occupied for use solely for their own purposes by chambers of commerce or boards of trade in this State are exempt. 36 M.R.S.A. § 652(l)(F). This exemption is subject to the requirements regarding use of profits, benefits to officers and employees, and financial reports previously outlined for charitable or benevolent institutions.

Religious Organizations. Houses of religious worship (e.g., churches, synagogues, mosques), including vestries, and the pews and furniture within the building, tombs and rights of burial, property owned and used by a religious society as a parsonage to the value of $20,000, and personal property not exceeding $6,000 in value are exempt from taxation, but so much of any parsonage as is rented is taxable. 36 M.R.S.A. § 652(l)(G). A "parsonage" means the principal residence provided by a religious society for its clergy. It does not have to be located in the same municipality or place as the house of worship to be eligible for the exemption.

A number of Maine Superior Court cases have addressed the issue of whether a structure was exempt as a "house of worship" and whether other buildings or land owned or used by a church were also exempt. In one decision, a building owned by a for-profit partnership and leased rent-free to the Victory Assembly of God was held not to be a tax exempt house of worship. *Gammon v. City of Presque Isle,* CV-87-40 (Me. Super. Ct., Aroos. Cty., Oct. 10, 1990). In another case, the court upheld a decision by assessors to tax all of a church's property not specifically listed as exempt in § 652(l)(G), noting that the "legislative history clearly shows that only specifically listed property is exempt and that all other property remains taxable." (The assessors had exempted the church building and the parsonage to the extent authorized by § 652 but had taxed all of the land.) *Inhabitants of Town of Richmond v. Richmond Corner Baptist Church,* CV-86-119 (Me. Super. Ct., Sagh. Cty., Oct. 27, 1987). Another case held that it is reasonable for the assessors to allot a certain amount of land to each building located on a church-owned parcel for the purposes of deciding what was taxable and what was exempt. The court noted that although § 652 mentioned only certain church structures, the assessors did not violate any statute or case law in dividing the church land into separate parcels of reasonable size in order to determine exempt status. Although the court did not expressly hold that the church was entitled to an exemption on some or all of the land in this case, it strongly suggested that such an exemption was required by § 652(l)(G). *Woolwich-*

Wiscasset Baptist Church v. Inhabitants of Town of Woolwich, CV-86-72 (Me. Super. Ct., Sagh. Cty., Oct. 23, 1987). In *City of Belfast v. Belfast Board of Assessment Review and Saint Margaret's Episcopal Church,* CV-91-50 (Me. Super. Ct., Waldo Cty., Oct.16, 1992), the court upheld a decision by the assessment review board to treat a building owned by the church and used for Sunday School, adult Bible study, church meetings, and storage of church materials and clothing as a "vestry" based on the *Webster's Dictionary* definition of "vestry": " a room in a church where the clergy put on their vestments and the sacred vessels are kept; a room in a church or church building where prayer meetings, Sunday School, etc. are held."

Regarding parsonages, to the extent that the *Woolwich-Wiscasset Baptist Church* case authorizes an assessor to treat a reasonable amount of land surrounding the building as part of the "parsonage," the total available exemption is $20,000; if the parsonage is on a separate parcel from the church and vestry and the parsonage building has a value exceeding $20,000, then the remaining building value and the value of the land are taxable. If the building value is less than $20,000, then some of the land value could be included to reach the full $20,000 exemption.

A structure regularly and predominantly used as a place of public worship has been held to be a church for zoning purposes. *Marsland v. International Soc. for Krishna Consciousness,* 657 P.2d 1035 (1983).

Fraternal Organizations. Real estate and personal property owned by or held in trust for fraternal organizations operating under the lodge system (such as the Elks Club, Odd Fellows, and Masons) that is used solely by fraternal organizations for meetings, ceremonies, religious or moralistic instruction, including all facilities appurtenant to such use and used in connection with it, are exempt from taxation; college fraternities are not included under this exemption. *But see*, *Alpha Rho Zeta v. City of Waterville,* 477 A.2d 1131 (Me. 1984). But if only part of a building is used for such purposes, a partial exemption should be granted. 36 M.R.S.A. § 652(l)(H). Again, the same stipulations regarding financial reports, use of profits, and benefits to officers and employees discussed in relation to charitable institutions apply here.

Tenants of Exempt Organizations. The real and personal property owned by one or more of the above exempt organizations and occupied or used solely for their own purposes by one or more other such organizations is exempt. 36 M.R.S.A. § 652(l)(J).

Hospitals, Health Maintenance Organizations, Blood Banks. The real and personal property leased by and occupied or used solely for its own purposes by an incorporated benevolent and charitable organization that is exempt from taxation under § 501 of the Internal Revenue Code of 1954, as amended, and the primary purpose of which is the operation of a hospital licensed by the Department of Human Services, health maintenance organization or blood bank, is exempt. 36 M.R.S.A. § 652(l)(K).

In addition, 24 M.R.S.A. § 2311 declares that non-profit hospitals and medical service organizations which are subject to Title 24, Chapter 19 of the Maine statutes are charitable and benevolent institutions and their property is tax exempt.

Service Charges. Section 652(l)(L) authorizes the municipality's legislative body to adopt an ordinance establishing a service charge on residential property owned by an institution or organization exempt from property taxation which is used to provide rental income. Student housing and parsonages are exempt from these service charges. The service charge must be calculated according to the actual cost of providing municipal services to that real estate and to the people who use that property. Since this is not legally a tax, it may be apportioned to a particular piece of property by a method other than "ad valorem," such as a formula based on the number of people living or working on that parcel. (See Appendix 5 for a sample ordinance.) Even if tax exempt property is not subject to a service charge, it may be possible for a municipality to negotiate a voluntary contribution from a tax-exempt organization. (See Appendix 5 for a sample "payment in lieu of taxes" agreement, also known as a "PILOT" agreement. See Appendix 7 for a list of *Maine Townsman* articles which includes an article relating to "PILOTS.")

Timely Application Required. Any organization or institution wishing to claim tax exempt status under 36 M.R.S.A. § 652 must file a written application and proof of entitlement with the assessors for each parcel to which the claimed exemption relates on or before April 1 of the year in which the exemption is first requested. The application must state the specific basis upon which the exemption is claimed. This is true whether the claimed exemption is for real or personal property. Once granted, the exemption remains in effect until the assessors determine that the organization or institution is no longer eligible. See Appendix 5 for a sample application form developed by former Waterville Asessor, Cynthia Cole Michaud, CMA.

Estates of Veterans and their Families

For many years, veterans, their widows, and minor children have been granted certain concessions in the field of taxation. Unlike most other exemptions. the exemption for a veteran is a specified amount in dollars which differs depending on the war during which the veteran served. 36 M.R.S.A. § 653. The law limits the exemption to property taxable in the municipality where the veteran's principal residence is located. The exemption includes all real and personal property taxable to the veteran there (up to a specified just value), whether owned by the veteran or by the veteran and his or her spouse in joint tenancy or held in a revocable living trust for the benefit of that veteran. The amount of the exemption must be adjusted by the ratio of current just value upon which the assessment is based (e.g., by the percentage of full value at which other taxable property is assessed). 36 M.R.S.A. § 653(l)(K).

The following is a list of the specific exemptions for veterans, their mothers, and their unremarried widows and minor children:

WWII, Korea, Vietnam. The estates up to the value of $5,000 having a taxable situs in the place of residence of veterans who served in the Armed Forces of the United States during any federally recognized war period, including the Korean Campaign, the Vietnam War and the Persian Gulf War provided: (1) they are 62 years old or (2) they are receiving any form of pension or compensation from the United States government for total disability, whether service-connected or nonservice-connected, as a veteran (i.e., a pension or disability payment from the Veterans Administration). 36 M.R.S.A. § 653(l)(C).

WWI and Pre-WWI. The estates up to a just value of $7,000, having a taxable situs in the place of residence of veterans who served in the Armed Forces of the United States during any federally recognized war period during or before World War I who would be eligible for an exemption under § 653(l)(C). (This exemption is in lieu of the § 653(1)(C) exemption.) 36 M.R.S.A. § 653 (l)(C-1).

Widow/Minor Child. The estates up to the value of $5,000, having a taxable situs in the place of residence, of the unremarried widow or minor child of any veteran who served in WWII, Korea, the Vietnam War or the Persian Gulf War provided: (1) the veteran would be entitled to such exemption if living or (2) the unremarried widow or minor child of the veteran is in receipt of a pension or compensation from the federal government as the unremarried widow or minor child of a veteran. 36 M.R.S.A. § 653(l)(D). "Unremarried" means a person who is neither the divorced wife of the veteran nor a person who has remarried. The widow of a veteran who remarries after her veteran husband's death loses her status as a veteran's widow and doesn't regain it when her new marriage ends in death or divorce. *Solon v. Holway*, 130 Me. 415 (1931). Regarding annulment of the subsequent marriage, see Opinion of the Maine Attorney General, June 23, 1971.

The estates up to a just value of $7,000 having a taxable situs in the place of residence of the unremarried widow or minor child of a veteran who served during a federally recognized war period during or before World War 1, provided: (1) that the veteran would be entitled to an exemption under § 653(l)(C-1) if living or (2) that the unremarried widow or minor child is in receipt of a pension or compensation from the federal government as the widow or minor child of a veteran. (This exemption is in lieu of the exemption under § 653(1)(D).) 36 M.R.S.A. § 653(l)(D-2).

Mother. The estates up to the value of $5,000 having a taxable situs in the place of residence of the mother of a deceased veteran who is 62 years of age or older and is an unremarried widow who is in receipt of a pension or compensation from the federal government based upon the service-connected death of her son who served in WWII, Korea, or the Vietnam War. 36 M.R.S.A. § 653(l)(D). Insurance benefits qualify as

"compensation" from the federal government. Opinion of the Maine Attorney General, May 18, 1973.

The estates up to a just value of $7,000 having a taxable situs in the place of residence of the mother of a deceased veteran who is 62 years of age or older and is an unremarried widow who is (1) in receipt of a pension or compensation from the federal government based upon the service-connected death of her child and (2) the service-connected death occurred during any federally recognized war period during or before World War I. (This exemption is in lieu of the exemption under § 653(l)(D).) 36 M.R.S.A. § 653(l)(D-3).

Paraplegic Veterans. The estates up to the value of $47,500, having a taxable situs in the place of residence, for specially adapted housing units of veterans who served in the Armed Forces of the United States during any federally recognized war period and who are "paraplegic veterans" within the meaning of the U.S. Code, Title 38, chapter 2l, § 801, and who received a grant from the United States government for such specially adapted housing, or of the unremarried widows of such veterans. 36 M.R.S.A. § 653(1)(D-1).

Veteran. The word "veteran" as used in § 653 means any person who was in active service in the Armed Forces of the United States during any federally-recognized war period, including the Korean Campaign, the Vietnam War, and the Persian Gulf War, and who, if discharged, retired, or separated from the Armed Forces, was discharged, retired or separated under other than dishonorable conditions. A veteran of the Vietnam War must have served on active duty for a period of more than 180 days, any part of which occurred after February 27, 1961 and before May 8, 1975 in the case of a veteran who served in the Republic of Vietnam, and after August 4, 1964 and before May 7, 1975 in all cases, unless the veteran died in service or was discharged for service-connected disability after that date. Members of the American Merchant Marine in Oceangoing Service who served between December 7, 1941 and August 15, 1945 are eligible for a veteran's exemption provided they (1) were employed by the War Shipping Administration or Office of Defense Transportation or their agents as (a) a merchant seaman documented by the U.S. Coast Guard or Department of Commerce, or (b) a civil servant employed by the U.S. Army Transport Service or the Naval Transportation Service and (2) served satisfactorily as a crew member during the period of armed conflict, December 7, 1941 to August 15, 1945, aboard merchant vessels in oceangoing (i.e., foreign, intercoastal, or coastwise) service and further to include "near foreign" voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or public vessels in oceangoing service or foreign waters. 36 M.R.S.A. § 653(1)(E); Maine Revenue Services Property Tax Bulletin #7.

For the purposes of the veterans eligible under § 653, "federally-recognized war periods" include:

?? WWI—April 6, 1917 through November 11, 1918;

?? WWI (service in Russia)—April 6, 1917 through March 31, 1920;
?? WWII—December 7, 1941 through December 31, 1946;
?? Korean Campaign—June 27, 1950 through January 31, 1955;
?? Vietnam War—August 5, 1964 through May 7, 1975; and actual service in the Republic of Vietnam between February 28, 1961 and August 5, 1964; and
?? Persian Gulf War—August 7, 1990 to the date recognized by the United States government as the end of the war.

"Armed Forces" includes active United States Armed Forces, Reserve or National Guard forces if activated regular service, United States Coast Guard, Officers of the Public Health Service detailed for active duty, Women's Army Auxiliary Corps, and American Merchant Marine (to the extent noted above).

Residency. To be eligible for exemption under the provisions of 36 M.R.S.A. § 653, a person must be a resident of this State. 36 M.R.S.A. § 653(l)(F).

One Veteran's Exemption; Other Exemptions May Apply. In no case shall one person be allowed exemption under more than one of the above categories. 36 M.R.S.A. § 653(1)(J). However, where two people jointly own property and both are qualified veterans, each would be entitled to claim an exemption on that property.

Some veterans and their spouses may also qualify for an exemption based on legal blindness. They also may be eligible for a homestead exemption. (See discussion of these appearing later in this chapter.)

Application for Exemption; Special Abatement Rule. The law clearly states that any person who wants to claim a veteran's exemption shall make written application and file written proof of entitlement with the assessors on or before the first day of April in the year in which the exemption is first requested. The assessors shall give the exemption to any person as long as he or she remains qualified and continues a resident of that municipality, unless they are notified of reason or desire for discontinuance. 36 M.R.S.A. § 653(1)(G). It should be noted that 36 M.R.S.A. § 841(4) makes special application provisions as part of the abatement process for unremarried widows and minor children of veterans who died during the 12-month period preceding April lst for which the tax was committed. Local assessors should be careful to have persons claiming exemption under 36 M.R.S.A. § 653 file written proof of entitlement in the form prescribed by Maine Revenue Services. If a written application for an exemption is not filed with the assessors on or before April 1st in the year in which the exemption is first requested, the request should be denied. The following are listed as examples of satisfactory evidence of entitlement in Maine Revenue Services Property Tax Bulletin #7:

- copy of a birth certificate together with presentation of honorable discharge papers, if the claim is based on having attained age 62;
- certificate or letter from the Veterans Administration or other federal agency that the applicant is receiving compensation or pension from the United States Government as a veteran or widow of a veteran—if evidence other than this certificate or letter is furnished, it should indicate whether the compensation or pension is for total disability, and if not, whether it is a service connected disability;
- widows, minor children, or widowed mothers of veterans should present a letter from the appropriate federal agency stating that they are in receipt of a pension from the United States Government because of being such a person;
- letter from Veterans Administration or other federal agency verifying grant from the United States Government to the paraplegic veteran for specially adapted housing.

Codes used by the Veterans Administration in a certificate or letter will be either a "1," "2," or "3." Code 1 means that the veteran is receiving compensation for a 10-90% service-connected disability. Therefore the veteran is not entitled to tax exemption because of disability. Code 2 indicates that the veteran is receiving compensation for total service-connected disability and is entitled to property tax exemption. Code 3 means that the veteran is receiving a nonservice-related pension due to total disability and is entitled to property tax exemption. Codes 2 and 3 also apply to the widows of veterans and indicate that the widow is receiving compensation (#2) or a pension (#3) from the government and is therefore entitled to a property tax exemption. Questions regarding individual code information can be directed to Veterans Services Division, Veterans Administration Center, Togus, Maine (1-800-827-1000).

Fraudulent Conveyance. Property conveyed to any person (except between husband and wife) for the purpose of obtaining exemption from taxation under the provisions of any part of 36 M.R.S.A. § 653 shall not be exempt. Obtaining such an exemption by means of fraudulent conveyance is punishable by a fine of not less than $100, nor more than twice the amount of the tax evaded, whichever amount is greater. 36 M.R.S.A. § 653(l)(I).

Reimbursement from the State. Any municipality granting exemptions under § 653 shall have a valid claim against the State to recover 90% of the taxes lost by reason of veterans exemptions in excess of 3% of the total local tax levy, upon proof of the facts in a form satisfactory to the Commissioner of the Department of Administrative and Financial Services. Such claims shall be presented to the next session of the Legislature. Claims for reimbursement should be submitted to the Property Tax Division of the Bureau of Maine Revenue Services on forms provided by Maine Revenue Services.

Estates of Persons Who Are Legally Blind

Title 36 M.R.S.A. § 654(l)(E) provides that residential real estate up to the just value of $4,000 of inhabitants of Maine who are legally blind as determined by a properly licensed doctor of medicine, osteopathy or optometry is exempt from taxation.

Section 654(l)(F) provides that no property conveyed to any person for the purpose of obtaining exemption from taxation under 36 M.R.S.A. § 654(1)(E) shall be exempt. Obtaining such an exemption by means of fraudulent conveyance is punishable by a fine of not less than $100 and not more than twice the amount of the taxes evaded by such fraudulent conveyance, whichever amount is greater.

If any blind person entitled to exemption has property taxable in more than one municipality in the State, a proportion of the total exemption shall be made in each municipality as the value of the property taxable in that municipality bears to the value of the whole of the property of that person taxable in the State.

Personal Property

Property Exempt Under Section 655. The following personal property is exempt from taxation under 36 M.R.S.A. § 655:

** **Industrial Inventories.** Industrial inventories, including raw materials, goods in process, and finished work on hand.

** **Stock in Trade.** Stock in trade, including inventory held for resale by a distributor, wholesaler, retail merchant or service establishment. It includes an unoccupied manufactured home that is not connected to water or sewer and that is owned and offered for sale by a licensed seller of manufactured homes. *Inhabitants of Town of Farmington v. Hardy's Trailer Sales, Inc.,* 410 A.2d 221 (Me. 1980). "Inventory held for resale" includes inventory that is held both for resale and for rental. *Eagle Rental, Inc. v. City of Waterville*, 632 A.2d 130 (Me. 1993). Property that is out on rental and not in the owner's possession on April 1 is not exempt. *Handyman Equipment Rental Co., Inc. v. City of Portland,* 1999 ME 20, 724 A.2d 605, *citing Eagle Rental*, *supra*.

** **Agricultural Products.** Agricultural produce and forest products, including logs, pulpwood, woodchips and lumber.

** **Livestock.** Livestock, including farm animals, neat cattle (cattle which have a cloven or split hoof and which also chew their cud), and fowl.

** **Household Property.** The household furniture, including television sets and musical instruments, of all persons in any one household, their wearing apparel, farming utensils and mechanical tools (i.e., hand tools) necessary for their business.

** **Radium.** All radium used in the practice of medicine.

** **Goods in Transit.** Property in possession of a common carrier while in interstate transportation or held en route awaiting further transportation to the destination named in a bill of lading.

** **Vessels.** Vessels built, in the process of construction, or undergoing repairs, that are within the State on the first day of each April and are owned by persons residing out of the State. "Vessels" as used in this paragraph shall not be construed to include pleasure vessels and boats.

** **Pleasure Vessels.** Pleasure vessels and boats in the State on the first day of each April whose owners reside out of the State and which are left in this State temporarily by the owners for the purpose of repair or storage, except those regularly kept in the State during the preceding year.

** **Alien and Out-of-State Property.** Personal property in another state or country and legally taxed there.

** **Vehicles.** Vehicles exempt from excise tax in accordance with 36 M.R.S.A. § 1483.

** **Snowmobiles.** Registered snowmobiles, as defined in 12 M.R.S.A. § 7821(5).

** **Farm Machinery.** All farm machinery used exclusively in production of hay and field crops to the aggregate actual market value not exceeding $10,000, excluding motor vehicles. "Motor vehicles" means any self-propelled vehicle.

** **Pollution Control Facilities.** Water pollution and air pollution control facilities as defined in 36 M.R.S.A. § 655(l)(N), if certified as such by the Department of Environmental Protection on or before April 1 of the first year in which the exemption is claimed. 36 M.R.S.A. § 656(l)(E); *Connecticut Bank and Trust Co., N.A. v. City of Westbrook,* 477 A.2d 269 (Me. 1984); *International Paper Co. v. Board of Environmental Protection,* 1999 ME 135, 737 A.2d 1047.

** **Beehives.** All beehives.

** **Personal Property Owned by Individual.** All items of individually owned personal property with a just value of less than $1,000 except:

> Items used for industrial or commercial purposes;

> Vehicles and camp trailers as defined in 36 M.R.S.A. § 1481 and not subject to an excise tax.

The $1,000 exemption applies to each individual item of property and not to an accumulated total value of all items owned by an individual.

Mining Property. Mining property as provided in 36 M.R.S.A. § 2854.

Personal Property Owned by Non-Resident Military Personnel. Tangible and intangible personal property located within the State but owned by a person serving in the military who is not a legal resident of the State. 50 U.S.C. App. §§ 560, 574; *United States v. Arlington County*, 326 F.2d 929 (1964). A mobile home which is not permanently affixed to land is considered personal property, even though it is connected to water, sewer, and electrical facilities. *United States v. Chester County Board of Assessment and Revision of Taxes*, 281 F.Supp. 1001 (1968).

Telecommunications Personal Property. Telecommunications personal property as defined in 36 M.R.S.A. § 457 is subject only to a State tax if owned or leased by a telecommunications business and used in the transmission of two-way interactive communications. 36 M.R.S.A. § 458. If the property is owned or leased by a person who is not a telecommunications business, then it must be assessed by the municipality where located on April 1.

Real Estate

Exemptions Under § 656. The following real property is exempt from taxation under 36 M.R.S.A. § 656:

** **Water Companies.** The aqueducts, pipes and conduits of any corporation supplying a municipality with water when the municipality uses some of the water for the extinguishment of fires without charge.

** **Minerals.** Mines of gold, silver or baser metals, when opened and in the process of development, are exempt for 10 years from the time of opening. (This does not apply to the taxation of the lands or surface improvements of those mines.)

** **Private Airports.** The landing area of a privately owned airport, the use of which is approved by the Air Transportation Division of the Department of Transportation when the owner grants free use of that landing area to the public.

** **Pollution Control Facilities.**

Water Pollution Control Facilities. Water pollution control facilities having a capacity to handle at least 4,000 gallons of waste per day, certified as such by the Board of Environmental Protection by April lst, and all parts and accessories thereof. *Connecticut Bank and Trust Co., N.A. v. City of Westbrook,* 477 A.2d 269 (Me. 1984). A water pollution control facility means any disposal system or treatment works, appliance, equipment, machinery, installation or structure installed, acquired or placed in operation primarily for the purpose of reducing, controlling or eliminating water pollution caused by industrial, commercial or domestic waste. 36 M.R.S.A. § 656(l)(E)(1); *Gulf Island Pond Oxygenation Project Partnership v. Board of Environmental Protection,* 644 A.2d 1055 (Me. 1994).

Air Pollution Control Facilities. Air pollution control facilities, certified as such by the Board of Environmental Protection by April 1st, and all parts and accessories thereof. "Facility" means any appliance, equipment, machinery, installation, or structures installed, acquired or placed in operation primarily for the purpose of reducing, controlling, eliminating, or disposing of industrial air pollutants. Air conditioners, dust collectors, fans and similar facilities designed, constructed or installed solely for the benefit of the person for whom installed or the personnel of such person do not constitute air pollution control facilities. 36 M.R.S.A. § 656(l)(E)(2).

To be entitled to such an exemption, however, the taxpayer must prove that the pollution control facility for which an abatement is sought is "installed, acquired or placed in operation primarily for the purpose of reducing, controlling or eliminating" pollution. This may require an evidentiary hearing before the Board of Environmental Protection to ascertain the primary purpose of the facility. A hearing is particularly helpful when a facility can serve more than one purpose, as for instance, where it has the function of increasing production as well as of reducing pollution. In making a determination as to the facility's primary purpose, the fact finder must consider several factors along with the taxpayer's motivation, including the actual use to which the equipment will be put, the equipment's effect upon pollution, and the purposes for installation of the equipment. The taxpayer's intent is not determinative of the issue. *International Paper v. Board of Environmental Protection,* 1999 ME 135, 737 A.2d 1047. For another case interpreting this statute, see *Gulf Island Pond Oxygenation Project, supra*.

** **Mining Property.** Mining property is exempt as provided in 36 M.R.S.A. § 2854.

** **Animal Waste Storage Facility.** "Animal waste storage facility" is defined as "a structure or pit constructed and used solely for storing manure, animal bedding waste, or other wastes generated by animal production." A facility is eligible for the exemption if the Commissioner of Agriculture, Food and Rural Resources certifies

that a nutrient management plan has been prepared in accordance with Title 7, Section 4204 for that farm utilizing that animal waste storage facility.

Mobile Home Owned by Non-Resident Military Personnel. See the discussion above in this chapter regarding "personal property owned by non-resident military personnel."

State Reimbursement for Exemptions

Art. IV, Part 3, § 23 of the Maine Constitution requires the state to reimburse each municipality 50% of the property tax revenue loss suffered during the previous calendar year as a result of statutory property tax exemptions or credits enacted after April 1, 1978. Title 36 M.R.S.A. § 661 establishes the procedure by which the State Tax Assessor will determine the extent of the loss by a municipality, the method by which a municipality may file a claim for reimbursement, and the deadline for payment by the State Treasurer. Reimbursement claims are now incorporated into the Municipal Valuation Return form (see Appendix 2).

"Circuit Breaker" Property Tax Refund/Deferred Collection

Circuit Breaker Program. In order to relieve certain taxpayers from the impact of property taxes, the Legislature enacted the Household Tax and Rent Refund Act (also known as the "Circuit Breaker" program). 36 M.R.S.A. §§ 6201 et seq. The Act does not require local assessors to perform any duties with respect to this relief, other than the implied obligation to provide information to an applicant or to Maine Revenue Services regarding the assessed value of the dwelling and the first ten acres of the subject property. Rather, it provides for the State Tax Assessor to administer a system of grants to persons who meet the age, income, and other requirements of the Act. Relief provided by this program is available to persons who rent as well as those who own their home. Only one claimant per household per year is entitled to relief. Contact Maine Revenue Services for more information.

Deferral Program. Title 36 M.R.S.A. §§ 6250-6266 provide a procedure by which one or more elderly taxpayers who meet certain age, income, and filing requirements may elect to defer payment of the property taxes on their homestead by filing a deferral claim with the local assessor after January 1st and on or before April lst of the first year the deferral is claimed. For more information, contact Maine Revenue Services.

Homestead Exemption

The Maine Legislature enacted the Maine Resident Homestead Property Tax Exemption Act in 1997. 36 M.R.S.A. §§ 681-688. This Act establishes an exemption of up to $7,000 on the value of a homestead of a permanent resident of the State of Maine who has

owned a homestead in the State for the preceding twelve months. An initial application for exemption must be filed by April 1 of the year on which taxes are based. A person may appeal from a denial in the same manner in which appeals are taken from abatement decisions. See Appendix 5 for a full discussion of the Homestead Exemption.

Chapter 8

Property and Taxpayer Descriptions

Property and Taxpayer Descriptions

Description of Real Estate

Reasons for Proper Description. Title 36 M.R.S.A. § 552 establishes a statutory lien for unpaid real estate taxes. This lien arises on April 1 and continues until the taxes are paid, or until the lien is otherwise terminated by law. However, there must be a lawful assessment before the lien arises. *Williams v. Hilton,* 35 Me. 547 (1853); *Maddocks v. Stevens,* 89 Me. 336, 36 A.398 (1896); *Inhabitants of the Town of Warren v. Norwood,* 138 Me. 180, 24 A.2d 229 (1941). Municipalities normally enforce this statutory lien by using the real estate tax lien process outlined in 36 M.R.S.A. §§ 942 and 943. (See MMA's *Guide to Municipal Liens* for more detail.) If a tax is properly assessed and the lien procedure strictly followed, then the lien for unpaid taxes will automatically foreclose if full payment is not received during the period of redemption, passing title to the property to the municipality. (Other tax collection enforcement methods are described in MMA's *Tax Collectors and Treasurers Manual.*)

The value of this lien lies in its precedence over mortgages (prior or subsequent), attachments, conveyances and almost all claims and interests in the realty. Often, the preservation of this lien is the difference between collection and loss of the tax.

Since enforcement of the statutory lien is in the nature of a forfeiture of property, the law requires strict compliance with the statutory provisions relating to assessment and collection of taxes. Therefore, the assessors must make every effort to ensure that each assessment contains a legally sufficient real estate description to support a tax lien.

Collector Bound by Assessor's Description. Once a description is placed in the assessor's valuation book and the tax is committed, the collector is absolutely bound by it. The court has stated repeatedly that the collector must obtain his or her information from the assessment. The collector has no authority to add to or take from it so as to correct an unclear or defective description. The assessment must be complete in and of itself as much as a deed or contract. *Greene v. Lunt,* 58 Me. 518, 533 (1870); *Oceanic Hotel Co. v. Angell,* 143 Me. 160, 57 A.2d 143 (1948); *Thompson v. Gaudette*, 148 Me. 288, 92 A.2d 342 (1952). "It must locate the land with such reasonable certainty as to identify it without the aid of extrinsic fact." *Kelley v. Jones,* 110 Me. 252 (1931). The assessors, moreover, are not permitted to add to or subtract from that description after the commitment is made, other than by the process of abatement and supplemental assessment where legally authorized.

Content of the Description. Title 36 M.R.S.A. § 552 requires that "in the inventory and valuation upon which the assessment is made, there shall be a description of the real estate taxed, sufficiently accurate to identify it." In the prosecution of the tax lien, the law

requires great exactitude. The court has noted on numerous occasions that "the law abhors a forfeiture." *Whitmore v. Learned,* 70 Me. 276 (1879). The courts will not give the collector the "benefit of the doubt." *Brown v. Veazie,* 25 Me. 359, 362 (1845). The description of real estate assessed must be certain or refer to something by which it can be made certain. *Hunt v. Latham,* 121 Me. 303, 117 A.94 (1922); *Town of Pownal v. Anderson,* 1999 ME 70, 728 A.2d 1254. It must be "sufficient to alert the property owner that his or her title to the property is in jeopardy." *Estabrook v. Town of Bowdoin,* 568 A.2d 1098 (Me. 1990), *citing Aucella v. Town of Winslow,* 564 A.2d 68 (Me. 1989) and *Town of Orient v. Dwyer,* 490 A.2d 660 (Me. 1985); *Nadeau v. Town of Oakfield,* 572 A.2d 491 (Me. 1990); *Hamm v. Town of Medway,* 644 A.2d 1388, 1389 (Me. 1994) ("Under the functional test, a description that describes the property by metes and bounds or landmarks, or refers to a plan or map by name, or tells the location of the particular plan or map is legally sufficient.").

If a sufficient description is not written by the assessors, then some of the statutory collection procedures are not available to the tax collector: the tax deed fails, the action of debt with special attachment fails, and the tax lien mortgage process is invalidated. *Burgess v. Robinson,* 95 Me. 120, 49 A.606 (1901); *Cassidy v. Aroostook Hotels,* 134 Me. 341, 186 A.665 (1936); *Ladd v. Dickey,* 84 Me. 190, 24 A.813 (1892); *Greene v. Lunt,* 58 Me. 518 (1870); *Nason v. Ricker,* 63 Me. 381 (1873); *Inhabitants of Orono v. Veazie,* 61 Me. 431 (1871); *Inhabitants of Old Town v. Blake,* 74 Me. 280 (1883); *French v. Patterson,* 61 Me. 203 (1870); *Greene v. Walker,* 63 Me. 313 (1873). Then only the right to sue the taxpayer for a personal liability remains as a collection option. *Cassidy, supra; Bucksport v. Swazey,* 132 Me. 36, 165 A.164 (1933).

Methods of Describing Property. There are two basic methods of describing real property: by "metes and bounds" and "by reference."

> **"Metes and bounds."** This type of description is commonly found in deeds. It consists of stating the location of each boundary of the property in a clockwise or counterclockwise direction. It starts at a single located point and returns to that point. It generally relates to roads, stonewalls, iron pins, familiar landmarks, and neighboring properties to locate the lines.

> **"By reference."** Description "by reference" includes such means as "book and page," "by name," "tax maps or plans," and the like.

> **"Book and page."** This description is one of reference, i.e., the specific book number and page number of the deed to the taxpayer's land and the named County Registry of Deeds where the deed is recorded. *Perry v. Lincolnville,* 149 Me. 173, 99 A.2d 294 (1953).

> **"By name."** This description is also one of reference, but is limited in use. It refers to a well-known landmark of some sort, such as a well-known hotel, or the like. However, its use is severely limited, as few properties in a municipality are so well-known that this type of description may be used.

> **"Tax map and lot number" or "plot or plans."** This description is the most common type of reference. It consists of accurately mapping a municipality and, by means of a set of symbols, referring to the property to be taxed. Maine Revenue Services has prepared Property Tax Bulletins covering this method in detail. They are available by contacting Maine Revenue Services or on the Internet at MMA's website or at the Maine Revenue Services website. (See Appendix 7 for addresses and phone numbers.) If this method of describing real estate is used, it must state the title and date of the map series, and who prepared it, or tell where the maps are filed for public inspection. *Hamm v. Town of Medway, supra*. The sample language which appears below could be used as worded, but it would also be legal to eliminate the statement which says that the maps are on file at the Assessor's office:

Map___Lot___ of the Assessor's Tax Maps of the Town of _____. Prepared by James W. Sewall Co., Old Town, Maine, dated _____, 20__, consisting of ____maps, numbered ___ to___, inclusive, which are on file at the Assessor's office in the _____ town office.

What Constitutes A Valid Description? As was previously noted, the assessors must use property descriptions sufficient to clearly indicate the property taxed. *Orono v. Veazie,* 61 Me. 431 (1871); *Hunt v. Latham,* 121 Me. 303, 117 A.94 (1922); *Oceanic Hotel Co. v. Angell,* 143 Me. 160, 57 A.2d 143 (1948). The court has stated that "the statute does not require, nor is it often practicable, that the assessors of taxes should give a minute description of the lands assessed by them." *French v. Patterson,* 61 Me. 203 (1870); *Hamm v. Town of Medway,* 644 A.2d 1388 (Me. 1994). However, there must be enough detail in the assessor's valuation book to permit a person using the information to identify the land and buildings upon the face of the earth. *Greene v. Lunt, supra; Orono v. Veazie, supra*.; *Gray v. Hutchins,* 150 Me. 96, 104 A.2d 423 (1954). If the description refers to a plan, map or other document, it is sufficient to refer to that document by name. It is not necessary to say also where the referred document is located. *Hamm, supra*. The assessors do not need to use a description which is as detailed as a person would want to use if he or she were buying real estate and taking a warranty deed. The assessors may make a very short description, but enough description must be used to make definite and certain the real estate intended, although one seeking to find it on the earth may have to use common sense to a reasonable extent. If a means to locate the real estate with definiteness by the use of competent evidence outside the book is given, this is enough. The following descriptions have been upheld in various Maine court decisions:

* "The land described in the deed from John Jones to James Smith dated April 1, 1983 and recorded in Cumberland County Registry of Deeds in Book 2000 at Page 100. Dwelling house on same."
* "Lot No. 2, Blackacre Park, according to plan recorded in Cumberland County Registry of Deeds in Plan Book at page 700…."

In the foregoing descriptions there is sufficient information to afford the average person ample direction and evidence to find exactly what real estate is assessed, although the person may have to look beyond the assessor's book. The law does not prevent the assessors from putting persons to a little work so long as the assessors provide them with adequate sources. The common practice of describing land by bounding it by compass points (that is, by naming the surrounding parcels, or other boundaries such as roads, streets, town lines, or railroad rights of way) is valid if the boundaries used are correct and ascertainable; for example: "Land bounded on North by land of John Doe and Richard Doe, on east by land (right of way) of Maine Central Railroad, on South by U.S. Highway No. 1, and on West by Goshen-Toonerville town line [followed by brief description of building, if any, located thereon]." However, these descriptions often are not accurately obtained or updated and often become obsolete. In this type of description care should be taken (1) to list correctly the name of the owner of each (and every) surrounding parcel, and (2) to give the correct direction (north, east, south, west) in which each such surrounding parcel lies with respect to that described.

The following descriptions have been held to be insufficient:

> "2 acres of land, house, boom, and privileges, share of lots one and two." (Held by the Court to be "…vague and uncertain upon its face and affords no means by which it can be made certain by competent evidence… [i.e., from *any* source]." *Orono v. Veazie* 61 Me. 431, 433 (1871).
> "Southwest Part of two river lots Nos. 1 and 2, range 1,100 acres adjoining Adelia Eustis and Jonas Greene's land." *Greene v. Walker*, 63 Me. 311 (1873).
> "A part of lot 1, range 2, 80 acres, adjoining Noah Hall's back land on northeast, bounded westerly by Peck's Grant land." *Greene v. Walker, supra*
> "A part or surplus of S.R. Newall's homestead, lot 5, range 3, 6 acres." *Greene v. Walker, supra*.
> "The northwesterly part of lot 6, range 5, 25 acres on which Aaron P. Cox resides." *Greene v. Walker, supra.*
> "A piece of land on the east side of Worthly Pond between the pond and Wm. Harlow's farm-8 acres." *Greene v. Walker, supra.*
> "The lot or part of lot lying southerly and adjoining B.R. Newell's and P.J. Hopkins' woodland-lot 3, range 4, 60 acres." *Greene v. Walker, supra.*
> "One-half island." (Does not tell which half or which island.) *Greene v. Lunt*, 58 Me. 518 (1870).

- > "Land, east corner of Congress & Exchange Street, extending through to Market." *Bingham v. Smith,* 64 Me. 450 (1874).
- > "Said real estate being bounded and described as follows: Lot No. 1571." (There was no reference to a plan by name or to the place where it was on file. It was held insufficient and invalid as a basis of tax title claimed by defendant against plaintiff's ownership under a deed.) *Ouellette v. Daigle,* 219 A.2d 545 (Me. 1966).
- > "Lot 93 and 95." *Nadeau v. Town of Oakfield*, 572 A.2d 491 (Me. 1990) (description insufficient despite local tradition of listing property only by lot number, without reference to a map, plan or survey).
- > "275 acres more or less in Temple Survey (formerly Lucerne-in-Maine Community Association) Mann Lot" and "275 acres more or less, in Temple Survey (formerly Lucerne-in-Maine Community Association) Mann Lot. See Han. Registry of Deeds, Book 649, Pg. 143," (where "Temple Survey" not in existence at registry of deeds or town office, the "Mann Lot" is located on a different plan and is not the same lot intended to be described in the liens, and the second reference as recorded in the registry actually referred to a 646-acre lot) *Johnson v. Town of Dedham,* 490 A.2d 1187 (Me. 1985).
- > "Lot No. 9 as shown on Plan of Lots, South Shore of Silver Lake, Roxbury, Maine and recorded at Oxford, ss. Registry of Deeds, Vol. D., Page 49. Cottage." (The correct (i.e., deed) description was "Lot No. 9 as shown on Plan of Camp Lots, south side of Silver Lake, Roxbury, Maine and recorded September 3, 1949 in the Oxford County Registry of Deeds in Volume E, Page 58.") *Arsenault v. Town of Roxbury*, 275 A.2d § 98 (Me. 1971).
- > "Store and tenement over same and N.W. part of Lot No. 16, corner Hammond and Union Street of Andrew Kelley heirs." (No part of the premises was in fact in Lot 16 and there were two such stores with tenement on that intersection.) *Kelley v. Jones*, 110 Me. 360 (1913).

The following descriptions have been held to be sufficient:

- > "Lot six, range three." *Greene v. Lunt,* 58 Me. 518 (1870) (where the land in question embraced an entire lot).
- > "The following described real estate situated in said City of Auburn, to wit: Grand View Hotel, West Auburn." (There was no evidence that there was more than one piece of property at West Auburn known as "Grand View Hotel," so the court held the description sufficient. It said outside testimony could supply actual boundaries.) *Hunt v. Latham,* 121 Me. 303, 117 A.94 (1922).
- > "The island opposite N. Walker's and above Aiden's Ferry." (held sufficient to apply the description to the face of the earth) *Greene v. Lunt, supra.*
- > "N-J. 0. Brown heirs, E-Albert Burgoin, S-Peter Baker, W-Starbird Corner Litchfield Road." *Estabrook v. Bowdoin,* 568 A.2d 1098 (Me. 1990) (omission of

word "to" after "Corner" not fatal since all the other references were complete and correct).

> "Farm on E/S of Augusta-Map 1 Lot 20 of the tax maps of the Town of Winslow, made by Richard B. Partridge, Town Assessor, dated April 1, 1984, consisting of 38 maps, numbered 1 to 38, inclusive, on file at the assessors office in the town of Winslow, being furthered described in Book ___ Page _____ as found in the Kennebec County Registry of Deeds." *Aucella v. Town of Winslow,* 564 A.2d 68 (Me. 1989) (omission of word "Road" after "Augusta" in first line and Registry references are not fatal because reference to Map and Lot numbers was itself a sufficient description).

> "Map 16 Lot 34 of the Assessors Tax Maps of the Town of Medway, Maine. Made by James W. Sewall of Old Town, Maine. Dated 1979. Consisting of 19 Maps Numbered 1 to 19." (It did not disclose a specific location where the map was on file. The court found that it had never required that tax maps be described both by their name and location.) *Hamm v. Town of Medway,* 644 A.2d 1388, 1389 (Me. 1994).

> "Map 9, Parcel 45 of the Assessment Plans, Pownal, Maine, Dated April 1, 1974. Revised to April 1, 1992. Drawn by John E. O'Donnell & Assoc., Auburn, Maine and on file at the Town Office. Deed recorded and County Registry of Deeds, Book _____ Page _____." (The Court said that it had "found similar descriptions sufficient in the past to identify properties with reasonable certainty.") *Town of Pownal v. Anderson*, 1999 ME 70, 71, 728 A.2d 1254, 1256; *citing Hamm v. Town of Medway*, 644 A.2d 1388, 1389-90 (Me. 1994), *Aucella v. Town of Winslow*, 564 A.2d at 68 (Me. 1989), *and Davis v. City of Ellsworth*, 281 A.2d 138, 139 (Me. 1971).

> "Said real estate being bounded and described as follows: recorded in Book 402, Page 448 at Waldo County Registry of Deeds, Belfast, Maine." *Perry v. Town of Lincolnville*, 149 Me. 173, 99 A.2d 294 (1953).

Buildings/Mobile Homes

Buildings must be separately described and assessed. Not much description is usually given other than to designate that the buildings are of a certain type (e.g., house, barn, garage) and to list the buildings in such a place in the valuation book as to show that they are upon the land just previously described. 36 M.R.S.A. §§ 551, 552, 708.

It is very important to describe a mobile home accurately so that the municipality can record a valid real estate tax lien against it if necessary. While State property tax law treats mobile homes as real property, they are financed as goods. There is no deed to a mobile home that is not sold together with land, but only a bill of sale. Any lending documents are filed in the Secretary of State's office, not in the registry of deeds. Simply

remember that mobile homes, whether or not on land also owned by the owner of the mobile home, are subject to real property taxes and the tax lien foreclosure process and should be assessed like all other real property. Model and serial numbers are the best means of description and should be used along with make and model names and a general description of physical appearance. (See the discussion in Chapter 5 of how to assess mobile homes owned by people serving in the Armed Forces.)

Description of Personal Property

Assessors should set down in the valuation book opposite the names of all persons assessed for personal property the number and value of the various items of taxable personal property assessed to each person following the classification indicated in the assessor's book. However, the strict legal requirements are met even if personal property is described in a gross designation without any particularity. *Rockland v. Farnsworth,* 111 Me. 315, 89 A.65 (1913). If personal property is mortgaged before or becomes mortgaged after assessment, the collector cannot distrain the personal property unless it has been specifically and adequately described. 36 M.R.S.A. § 604; *Howard v. City of Augusta,* 74 Me. 79 (1882). Specific personal property descriptions also will help a tax collector who is attempting to record a personal property tax lien against the property with the Secretary of State under 36 M.R.S.A. § 612.

The Taxpayer

General Rule. As is true in describing real estate or personal property, it is important to accurately name the taxpayer. A tax levied against the wrong person is no tax at all. Some errors in naming taxpayers may be overlooked, but the best policy is to make sure the name is correct.

Effect of Error in Name. Title 36 M.R.S.A. § 504 provides in part: "nor shall any error, mistake or omission by the assessors, collector or treasurer render it [the assessment] void." This statute only protects the assessment against formal and non-substantial errors in assessments, and should not be relied upon by assessors. The following court decisions illustrate the limited scope and real purposes of that statute:

> The assessors assessed the "Farnsworth Manufacturing Company." The real name of the corporation was, in fact, the "Farnsworth Company." In a distraint action it appeared that the corporation was popularly known by both names. The court said: "If the party is liable to taxation, and is in fact whom the assessors intended to tax, it would be manifestly unjust that he should escape taxation for so trivial a cause as an error, mistake or omission in his designation, when his identity with the party designed to be taxed, can be established; and the statute was framed to prevent such a result." *Farnsworth Co. v. Rand,* 65 Me. 19 (1876).

> In another case the correct name was "D. Knowlton Company." Tax was assessed to "D. Knowlton & Co." The assessment was upheld, the court saying: "The variation was simply in the name of the same party, and too slight to raise any question of any other party." *Thorndike v. Inhabitants of Camden,* 82 Me. 39, 19 A.93 (1889).

> Where a collection did not involve forfeiture of the property, but was merely one for the collection of a personal property tax by an action of debt, the court said that an assessment to "Administrators of the estate of Thomas M. Reed" was good against the "Executors" of the last will of Thomas M. Reed, this being a mere mistake in designation. *Bath v. Reed,* 78 Me. 276, 4 A.688 (1886). (This would not be an issue for assessors now, because the Maine Probate Code uses the title "personal representative" for both individuals.)

> In another case the court would not allow a suit against "heirs" where the real estate should have been assessed to "devisees." *Elliot v. Spinney*, 69 Me. 31 (1878). (See Chapter 5 for a discussion of the difference in these terms.)

> Where a taxpayer named Campbell Cary was listed as "Cary Campbell" on real property tax liens, the misnomer of the taxpayer resulted in the Maine Supreme Judicial Court holding that the liens were void. This is because the tax lien certificates did not strictly comply with the statutory recording requirements, since a title examiner, who would be searching the Registry of Deeds for liens under the last name "Cary" would not find the ones recorded under the last name "Campbell." *Cary v. Town of Harrington,* 534 A.2d 355 (Me. 1987).

Assessment of Property with Joint Owners. Be aware that the manner of naming the taxpayer in the assessment of property owned jointly may affect the municipality's ability to collect the tax if it becomes delinquent. State law (36 M.R.S.A. § 555) contains an assessment rule allowing the municipality to assess taxes against only one of two or more joint owners (joint tenants or tenants in common) of property. However, the municipality cannot later foreclose upon all of the joint owners of the property if they have not all been listed on the tax lien certificate and thereby given notice that they might lose their property. *Anderson v. Town of Pownal,* 1999 ME 70 728 A.2d 1254. If the assessment lists all the joint owners, even though not legally required, it will help ensure that the tax collector lists all the joint owners on any tax lien later recorded against the property.

Assessment of Real Property Where Owner Has Died. Where the property owner has died, the assessment of real property should be to the personal representative or if there is none, to the heirs or devisees of the deceased. In particular, until the assessor receives notice of the division of the estate and of the identity of the heirs (who take the estate in the absence of a will) or of the "devisees" (who take the estate under a will), the municipality may assess the undivided estate to the "heirs of" the deceased or to the

"devisees of" the deceased without naming them or to the personal representative. However, the Maine Supreme Judicial Court has held that an assessment to the "Estate of" the named deceased person is not a legal assessment. An assessment may be made upon any of the heirs or devisees by name, and any heir or devisee so named is responsible for the full amount of the tax. 36 M.R.S.A. § 559. (See Chapter 5 for additional discussion.)

Chapter 9

Meetings and Records

Meetings and Records

Introduction

When the Maine Legislature adopted the current version of the Maine Freedom of Access Law (or "Right to Know" Law) (1 M.R.S.A. §§ 401-410) in 1975, it stated in very strong terms that, as a general rule, the records and workings of government are "the people's business" and that the public must have free access to them. This legislative intent appears in § 401.

Whenever there is a question about whether the public should be allowed to inspect or copy an assessor's records or attend a board of assessors meeting, the assessor should remember that the Legislature intended to grant broad rights of access to the public. In the absence of a statute which specifically makes a record or a proceeding confidential, the Freedom of Access Law requires that assessors allow public access to assessing records, and that boards of assessors provide notice of and allow the public to attend and record their meetings. For a copy of an MMA information packet which includes a copy of the law and articles discussing the law, contact the Legal Services Department or go to MMA's website. (See Appendix 7 for addresses and phone numbers.).

Public Proceedings

A "public proceeding" within the scope of the Freedom of Access Law is defined as "the transaction of any functions affecting any or all citizens of the State by…any board, commission, agency or authority of any…municipality, school district or any other political subdivision." 1 M.R.S.A. § 402(2)(C). Except as otherwise provided by statute, or where the Freedom of Access Law specifically allows an executive session under 1 M.R.S.A. § 405, all business conducted by a board of assessors is a "public proceeding" and must be conducted at an advertised meeting which is open to the public. (See the discussion of executive sessions which appears later in this chapter.) This is true whether the board is making decisions, merely discussing their work, or hearing, discussing and deciding an abatement request. *Chase v. Town of Machiasport,* 1998 ME 260, 721 A.2d 636. Any person must be permitted to attend. 1 M.R.S.A. § 403. No special interest in the matter need be shown. Persons attending may take notes, tape or film the proceeding so long as they do not interfere with the orderly conduct of the meeting. 1 M.R.S.A. § 404.

The right to attend a public proceeding does not necessarily mean the public has the right to participate in the meeting, unless it has been advertised as a public hearing. There may be many times when public input is welcome, but the board of assessors retains the right to control when this occurs, if at all. It may also adopt reasonable regulations governing any recording of the proceedings so that the exercise of these rights will not interfere with

the orderly conduct of business. However, such regulations may not be used to defeat the purposes of the law. 1 M.R.S.A. § 404.

Whenever a majority of the members of the board of assessors is together and discussing assessing or other matters within their jurisdiction, that meeting constitutes a "public proceeding." This is true whether the meeting is in a public building, in a coffee shop or in a private home. Also, when a majority of the members of the board of assessors conducts a site visit to evaluate a particular piece of property, that meeting constitutes a "public proceeding" as well. These meetings must be preceded by public notice to be legal. (See the discussion which appears below.)

Whether board members communicate by e-mail, telephone, or face-to-face, the Freedom of Access Law prohibits the conduct of board business other than at an advertised public board meeting. If the communication is simply a notice to members of a special meeting, it would not violate the law. But if the communication turns into a dialogue about substantive matters, it likely would violate the law, whether the conversation is by e-mail or otherwise. If the communication is substantive but there is no dialogue (for instance, a report by one of the board members), it may not be contrary to the open meetings requirement, but it should be shared publicly at the meeting, unless it is otherwise confidential and may be discussed in executive session. In short, any dialogue or deliberations by or between board members outside the context of a lawful board meeting are apt to run afoul of the board's obligation to conduct its business openly and in public.

Notice

The Freedom of Access Law requires that public notice be given for all public proceedings of a body or agency consisting of three (3) or more persons. 1 M.R.S.A. § 406. It is not always necessary for three (3) persons to meet for the notice requirement to apply. A three-member board of assessors needs only two (2) members present to hold a legal meeting. 1 M.R.S.A. § 71(3). Therefore, if two (2) assessors serving on a three (3) member board of assessors get together to make any decisions or to discuss assessing or some other matter within their jurisdiction, public notice must be given.

The Freedom of Access Law itself is quite general regarding the type of notice which must be given. It merely requires that notice "be given in ample time to allow public attendance." 1 M.R.S.A. § 406. It does not specify a particular manner by which to give notice, but states that notice should be disseminated in a manner reasonably calculated to notify the public in the area. The assessors should choose a method of notification that will reasonably communicate the fact that the meeting will be held. What is reasonable may vary according to the size of the community, the expectation of the public, or whether the board of assessors is going to conduct a regularly scheduled meeting or a special one. If a true emergency arises so that it is impossible to give meaningful notice to the general public, the board may notify the local representatives of the media by the

same means that they let the other members of the board know of the meeting. 1 M.R.S.A. § 406. The meeting may then proceed even if no representatives of the media attend.

Executive Session

The Freedom of Access Law is very specific (and limiting) regarding the how, when and what of executive sessions. First, an executive session may be used for deliberation only. No official actions may be finally approved in executive session. 1 M.R.S.A. § 405(2). An executive session must originate from a public proceeding and may only be called by a public, recorded vote on a motion which indicates the precise nature of the business of the executive session. The motion must be approved by 3/5 of the members present and voting. 1 M.R.S.A. § 405(3), (4). If, while in executive session, the body wishes to discuss another matter, even one for which an executive session is permitted, the body must go back to the public meeting and approve another motion by the same process.

The Freedom of Access Law allows executive session deliberations only for certain specific matters and no others. The matters which may be discussed in executive session are set forth in 1 M.R.S.A. § 405(6)(A) through (H). The tax matters which may be discussed in executive session are: (1) applications submitted to the municipal officers by people requesting tax abatements for poverty or infirmity reasons under 36 M.R.S.A. § 841(2); (2) information pertaining to litigation or the rights and duties of the board when the board's attorney is present; (3) certain types of personnel issues, to the extent this falls within the board's jurisdiction; and (4) information submitted by a taxpayer which has been held by a court to qualify as a "trade secret" (*Bangor Publishing Co. v. Town of Bucksport*, 682 A.2d 227 (Me. 1996)).

If a body or agency approves any official action in executive session, any person may appeal to Superior Court to have the action declared null and void. 1 M.R.S.A. § 409. If the officials involved violated the law willfully, the municipality is liable for a fine of up to $500. 1 M.R.S.A. § 410.

Public Access to Records

Public Record Defined. A public record is defined as virtually any piece of information that is in the possession or custody of an agency or public official and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of governmental business, with certain exceptions. This definition includes paper records as well as computer disks and e-mail.

The exceptions of interest to assessors are:

> Records that have been designated as confidential by statute (e.g., poverty abatement records).

> Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding. The municipality's attorney should be consulted in making this determination.

Inspection and Copying of Public Records. If a record in the hands of a public official is a "public record" according to the above definition, it may be inspected and copied by any person during the regular business hours of the custodian or location of the record. However, if it is necessary to translate data into a form capable of inspection (such as retrieving information from a computer), the person desiring the inspection may be required to pay the costs of translation in advance. Also, any inspection may be scheduled to occur at a time when it will not delay or inconvenience the regular activities of the custodian. The person requesting a copy of a written record may be required to pay the costs of the copy (which means the reasonable costs of the copier, paper and toner, or a computer disk, but not the cost of labor of the municipal employee who makes the copies). 1 M.R.S.A. § 406. The law does not require the municipality to drop everything and respond immediately to a request which will involve a lot of time to fulfill. The law states that the regular activities of the office need not be delayed or inconvenienced by responding to a request. Consequently, if the municipality indicates that it will need a number of days, weeks, or even months in order to complete the copying and the person making the request is unhappy with this, the person should be reminded that he or she has the option of copying the records by hand or by bringing in his or her own photocopier.

Regarding the obligation of a municipality to provide copies of assessor's cards or computerized valuation lists to members of the public who request them and who are willing to pay the cost of having the copies made, some assessors have taken the position that the Freedom of Access Law only requires an assessor to provide the individual making the request: (1) with an opportunity to inspect the municipality's copy of those records; and (2) with an opportunity to make his or her own handwritten or typewritten copies. Those assessors interpret the law as imposing a burden on the municipality to provide a copy at the person's expense only where the requested record does not exist in written form at the time the request is made. However, that interpretation is not consistent with the broad statement of purpose in Section 401 of the Freedom of Access Law and the public rights listed in Section 408 of that law.

The law does not require assessors to provide information over the telephone or by fax or by e-mail. An assessor may use his or her discretion regarding whether to answer such requests. Such assistance by an assessor may be good public relations, to the extent an assessor has the time to provide this service.

Sometimes a community receives a request from a private business seeking tax records. The request also specifies that the response be on computer disk in a certain "format," and that specific "fields" of information be provided from the total of tax information available. When the assessors receive such a request, first they should determine whether the information is public or confidential. In the case of property tax records, the information is generally public, so the municipality should not deny the request on the basis that it is private or personal. This includes information such as a parcel's assessed value, the total tax owed by a taxpayer, and the amount recommitted to a new tax collector. Confidential records related to assessing include poverty abatement records under 36 M.R.S.A. § 841(2), military identification numbers provided on veterans exemption applications under the Federal Freedom of Information Act, and forest management plans provided upon the request of the assessor under the Tree Growth Tax Law (36 M.R.S.A. § 579). A request cannot be denied simply because the requester is a business that wants to use the information for a profit-making purpose. As we move further into the computer age, assessors can expect banks, lawyers, real estate agents, investigators, insurance companies and other businesses to request public records on computer disk. At this time, Maine law does not permit municipalities to limit a response or charge an additional fee simply because the requester wants to use the information for commercial purposes. Next, the assessor must determine in what form the information must be made available. The Freedom of Access Law does not require that an assessor provide public records in whatever manner requested. For example, if the request asks for the records in ASCII format, the assessor need not comply if the municipality does not have computerized records or does not have the ability to put records in that particular format. In that situation, the assessor simply notifies the requester how the records are made available to everyone, and at what cost. Title 1 M.R.S.A. § 408 allows an assessor to charge for the cost of reproducing or copying a public record. If the information is not readily available in the format requested, but if it can be done at additional cost, notify the requester of the additional cost and let him or her decide whether to pay this additional cost. The law does not require that an assessor edit, cull, collate, or otherwise arrange the information in the manner requested. The assessor need only make the information available for inspection and copying in the manner in which it is normally kept. *See, Bangor Publishing Co. v. City of Bangor,* 544 A.2d 733 (Me. 1988). If a requester wants only certain information from the total, or wants the information arranged in a particular way, the assessor can charge for the additional costs of this customized work. The assessor should notify the requester first of the additional costs and let him or her decide whether to proceed with the work.

An issue that remains unresolved at the present time is the question of whether the public has a right to inspect and copy records being prepared by a consultant for a municipality which have not yet been completed and turned over to the municipality. The question is: Whose property is it at that point in time? An example of where this arises is work by a company doing a revaluation for a town under contract. The company has collected and computerized various sales and other valuation information and local realtors then

request copies. It is not clear at this time whether the company must release that information.

Where a record submitted by a taxpayer for consideration in a property tax matter is not expressly made confidential by any statute, the record is a public record for the purposes of the Freedom of Access Law, even if the taxpayer claims that it is a sensitive or privileged "trade secret." However, the taxpayer may seek a protective order from a court prohibiting its release to the public by the municipality; if issued, the record becomes confidential. *Cf., Bangor Publishing Co. v. Town of Bucksport,* 682 A.2d 227 (Me. 1996).

Time to Act on Requests. When the custodian of a record receives a request to inspect that record, the Freedom of Access Law gives the custodian five (5) working days from receipt of the request to determine whether the record is public and, if not, to state a reason for denial of inspection in writing. Requests need not be submitted in writing. This period of time should be adequate to obtain legal advice regarding whether or not the record must be released. It is best to delay release and seek such advice if there is any doubt regarding the right of public access to a particular record. However, as noted above, virtually all of the records in the possession of assessors are public, so confusion generally will not arise over whether public access may be allowed.

Records Required. The Freedom of Access Law itself requires that certain records be made. If any application, such as an application for an abatement, is denied or is conditionally approved (the latter is unlikely in the context of an abatement), the assessors must make a written record of their decision, setting forth the reason or reasons, and must make findings of fact in writing sufficient to apprise the applicant and any member of the public of the basis for the decision. 1 M.R.S.A. § 407(l). *Chase v. Town of Machiasport,* 1998 ME 260, 721 A.2d 636; *Christian Fellowship and Renewal Center v. Town of Limington,* 2001 ME 16, 769 A.2d 834; *Yusem v. Town of Raymond,* 2001 ME 61, 769 A.2d 834. The same is required whenever the board makes a decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. 1 M.R.S.A. § 407(2).

The Maine Supreme Judicial Court discussed the adequacy of findings of fact in the *Christian Fellowship and Renewal Center* case (cited above). The court found that "recitations of the parties' positions or reiterations of the evidence presented by the parties do not constitute findings and are not a substitute for findings." Findings need to link the evidence presented to the requirements of the law so that anyone reading a decision can understand how the ultimate decision to approve or deny an application for an abatement of tax exemption was reached.

E-Mail. E-mail is a public record under the Freedom of Access Law and therefore is subject to the right of the public to inspect and copy it, unless the contents can be kept confidential by law. In some cases, depending on the subject matter, e-mail may also be

governed by the State Archives Advisory Board's Rules for Disposition of Local Government Records, including requirements for retention of records for certain specified periods. (See discussion later in this chapter regarding records retention requirements.)

Violations

As stated earlier, a final action taken in violation of the Freedom of Access Law may be declared null and void. If records are wrongfully withheld from public inspection, any person may appeal to Superior Court for an order of disclosure. 1 M.R.S.A. § 409(l). These remedies are not exclusive of any other civil remedies against the body or official. Further, if a violation of the Freedom of Access Law is found to be willful, the municipality may be ordered by a court to pay a fine of up to $500. 1 M.R.S.A. § 410.

General Rules of Decision-Making

Authority of Individual Board Members. When a municipality has chosen to have a board of assessors rather than a single assessor, it is very important for the members of the board to act as a board when conducting any business on behalf of the municipality. Unless an individual member of the board has been authorized to act by a vote of the board at a public meeting, no single member has any greater authority to act than any of the others. This is true even if that member is the chairperson or "first assessor."

Quorum. Before the board legally may conduct any business, a "quorum" of the board must be present. Generally, this means a majority of the full board, unless otherwise provided by ordinance or charter. 1 M.R.S.A. § 71(3). If a member of the board has a conflict of interest requiring him or her to abstain, that member cannot be counted for purposes of meeting the quorum requirement for that particular item of business.

Majority Vote. Any official action taken by the board must be by a majority vote of the board. In the absence of an ordinance or charter provision to the contrary, the number that constitutes a "majority" is calculated on the basis of the full board rather than the number of board members present and voting, in the opinion of the MMA Legal Services Department attorneys. 1 M.R.S.A § 71(3).

Conflict of Interest. When a member of a board of assessors has a direct or indirect financial interest that will be affected by a decision that the board of assessors must make, that assessor is required to state for the record what that interest is and abstain from the discussion and the vote; this must be recorded in writing, such as by including this information in minutes of the meeting. 30-A M.R.S.A. § 2605; *Lesieur v. Inhabitants of Rumford,* 113 Me. 317 (1915). An obvious example is a decision regarding the value of that assessor's property.

Decisions Involving Relatives. When a decision that the board must make in a quasi-judicial capacity involves a person related to a member of the board by blood or marriage as close as second cousin, that board member is required to abstain from both the discussion and the vote, unless all parties consent to the member's participation. 1 M.R.S.A. § 71(6). An example would be a decision by the board on an application for an abatement.

Minutes. It is important for the board to keep minutes of all of its meetings and decisions. If the board does not have a paid secretary, then one of the members of the board should be designated as the board's secretary. While State law generally does not require a board to keep minutes, written minutes are the best way to prove what actions the board has taken and the basis for those actions in the event that a board member or someone from the public questions what the board has done.

Other Issues. For additional information about the process and requirements for decision-making by a board, see MMA's *Manual for Planning Boards* and *Manual for Local Land Use Appeals Boards*.

Records Preservation and Retention

Title 5 M.R.S.A. § 95-B generally requires assessors to protect and preserve from deterioration, mutilation, loss or destruction all public records in their custody. All non-current records must be stored in a fireproof safe or vault provided by the municipality. When an assessor leaves office, he or she must deliver all public records in his or her custody to the new assessor. No public record may be destroyed or otherwise disposed of by an assessor except in compliance with regulations published by the State Archives Advisory Board. Violation of those regulations is a Class E crime. A copy of the rules adopted by the board are available by contacting the State Archives in the Secretary of State's Office, MMA's Legal Services Department, or on the Internet. (See Appendix 7 for contact information.) Generally, if a record is not specifically covered in the regulations, it may not be destroyed without the written permission of the Board.

Board of Assessment Review

The general information regarding records, notice and conduct of meetings included in this chapter applies to a local board of assessment review as well as to a board of assessors. For additional information about the proceedings of a board of assessment review, see Chapter 10.

Chapter 10

Abatement and Appeal

Abatement and Appeal

Taxpayers may challenge their property tax assessments through the abatement process. Local abatement decisions may be appealed to local, county and State boards and to the courts. A number of different rules and procedures that govern the abatement and appeals processes are discussed in this chapter.

Types of Abatement Requests

It is important to categorize properly an abatement request at the outset in order to know who has authority to grant it and under what conditions. The following are the various types of abatement requests that can be filed under Maine law.

Overvaluation ("Error in Valuation"). Overvaluation is the most common type of request for abatement of property taxes. If a taxpayer believes that the valuation of his or her property is too high, the taxpayer's only remedy is to submit a written application for abatement, stating the grounds for the abatement. 36 M.R.S.A. § 841(1). The assessors also may grant such an abatement on their own initiative. The municipal officers have no legal authority to grant an abatement based on a claim of overvaluation.

> **Deadlines.** An application for abatement based on overvaluation must be filed by the taxpayer within 185 days of the commitment of the tax. Assessors may grant an abatement for overvaluation on their own initiative, but it must be done within one year of the commitment date. If no abatement action is initiated on an overvaluation within the 185-day or one-year deadlines in 36 M.R.S.A. § 841(1), that value must stand for that tax year, even if everyone agrees later that it was too high. These deadlines are critical since they are jurisdictional and may not be waived by the assessors or by an appeal body. *Inhabitants of Town of Monmouth v. County Commissioners of County of Kennebec,* CV-90-573 (Me. Super. Ct., Kenn. Cty., Aug. 23, 1991); *Salvation Army v. City of Lewiston,* CV-93-393 (Me. Super. Ct., Andro. Cty., June 27, 1994).

> **Scope of overvaluation remedy.** An abatement based on "overvaluation" is the proper (and only) remedy if a person believes that the assessed value of his or her property is too high, or where questions exist regarding the just value of the property based on the amount of acreage assessed, the actual description and conditions of the property on April 1st, and the assessment techniques used. *Berry v. Daigle,* 322 A.2d 320 (Me. 1974); *Depositors Trust Co. v. City of Belfast,* 295 A.2d 28 (Me. 1972). An abatement based on "overvaluation" also is the proper remedy if a person who is properly assessed for certain property in one town also is assessed for certain other property alleged to be taxable in that town but which in fact is: (1) taxable in an adjoining town; (2) exempt from taxation; or (3) not

owned by him. *Berry v. Daigle,* 322 A.2d 320 (Me. 1974); *Depositors Trust Co. v. City of Belfast,* 295 A.2d 28 (Me. 1972); *City of Lewiston v. All Maine Fair Assoc.,* 138 Me. 39 (1941); *Portland Terminal Co. v. City of Portland,* 129 Me. 264, 267 (1930); *City of Rockland v. Rockland Water Co.,* 82 Me. 188 (1887); *Inhabitants of Town of Georgetown v. Reid,* 132 Me. 414 (1934); *City of Bath v. Whitmore,* 79 Me. 182 (1887); *Gilpatirck v. Inhabitants of Saco,* 57 Me. 277 (1869). *Contra, Holbrook Island Sanctuary v. Inhabitants of Town of Brooksville,* 161 Me. 476 (1965). In addition, an abatement for overvaluation is the proper remedy to correct a misclassification of property. *Goldstein v. Town of Georgetown,* 1998 ME 261, 721 A.2d 180 (erroneous assessment of property as waterfront property when it actually was separated from water by a strip of land was a valuation error, not "illegality, error or irregularity in assessment"). However, where an assessment is wholly void, as for example, where a person not legally liable to be taxed for any of the property assessed to that person nevertheless is assessed for it, an application for abatement based on overvaluation is not appropriate. *City of Rockland v. Rockland Water Co.,* 82 Me. 188, 192, 19 A.163 (1889); *Herriman v. Stowers,* 43 Me. 497 (1857); *Talbot v. Inhabitants of Wesley*, 116 Me. 208, 100 A.937 (1917). The proper abatement request for a void assessment is based on "illegality, error, or irregularity" in the assessment. (See the next section of this chapter.)

Illegality, Error, or Irregularity. Title 36 M.R.S.A. § 841(1) authorizes the municipal officers (selectpersons or councilors) to grant an abatement on their own initiative or on written application at any time after one year but within three years from the commitment of the tax where necessary to correct an illegality, error or irregularity in the assessment. As noted above, these deadlines may not be waived. The assessors may grant an abatement on these grounds within the deadlines for assessors outlined above for an error in valuation.

> **Scope of illegality, error or irregularity abatement.** As was noted above and in Chapter 4, the reference in § ?41(1) to "illegality, error or irregularity" envisions a tax assessment that is void, not just imperfect. A real estate assessment is not void simply because it is not accompanied by any description of the property being assessed or is accompanied by a defective description; it is an assessment which cannot provide a legal basis upon which a tax collector can use a tax lien or tax deed as a method for collecting the tax which is due. *City of Rockland v. Farnsworth,* 111 Me. 315, 318-319 (1913). The tax in such a case must be collected through court action. On the other hand, if a person does not own any land in a town but is taxed for a parcel anyway, that tax is illegal and void. A tax also probably would be void if there is a significant error in the name of the person or business being assessed. For example, if the property were owned by Joe Smith who used it for a business that he owned called "The Handy Man, Inc." and the property were assessed to "The Handy Man, Inc." the assessment probably would

be void. Or, if it were assessed to "Joleen A. Jones" when the taxpayer's real name was "Joellen A. Jones" or "Joleen S. Jones," then the error in the spelling of the name or the use of the wrong middle initial probably would make the assessment void. Likewise, if the real property of a deceased person were assessed to "The Estate of Helen Hunt" rather than to the heirs, or devisees or personal representative (depending on which was legally correct in that situation), the assessment probably would be void. (See Chapters 5, 6 and 8 for additional discussion of this issue.)

An abatement on the grounds of error, illegality or irregularity is justified where the person assessed does not own any of the property, where all of the property is taxable in another town, or where all of it is exempt. *Credit Counseling Centers, Inc. v. City of South Portland*, 2003 ME 2 *(case citation from April 2003 Supplement)*; *Town of East Millinocket v. Town of Medway,* 486 A.2d 739 (Me. 1985); *Berry v. Daigle*, *supra*; *Depositors Trust Co. v. City of Belfast, supra*; *City of Lewiston v. All Maine Fair Association,* 138 Me. 39 (1941); *Portland Terminal Co. v. City of Portland,* 129 Me. 264, 267 (1930); *City of Rockland v. Rockland Water Co.,* 82 Me. 188 (1889); *Inhabitants of Town of Georgetown v. Reid,* 132 Me. 414 (1934); *City of Bath v. Whitmore,* 79 Me. 182 (1887); *Gilpatrick v. Inhabitants of Saco,* 57 Me. 277 (1869); *contra*, *Holbrook Island Sanctuary v. Inhabitants of Town of Brooksville,* 161 Me. 476 (1965). In addition to the examples provided above, other "illegalities" or "errors" might include: (1) an assessment in which an amount not legally raised at town meeting was included (36 M.R.S.A. § 503); (2) an assessment based on a tax rate in which too much overlay was included (36 M.R.S.A. § 710); (3) an assessment based on a computation error in preparing the commitment which results in too much tax being assessed (*Eastport Water Co. v. City of Eastport,* 288 A.2d 718 (Me. 1972)); (4) an assessment that is too high because too little State revenue sharing was deducted from the commitment; or (5) an assessment that is based on an *unconstitutional assessment* methodology that does not value all property in the same class in a like manner (*Farrelly v. Inhabitants of Town of Deer Isle,* 407 A.2d 302 (Me. 1979)) (e.g., adjustments made in value only for those properties which were recently sold), as opposed to using the wrong assessment methodology or classification for a piece of property (e.g., using the replacement cost less depreciation approach where the income approach more closely determines a property's just value, or where property was valued as "waterfront property" but was separated from the water by land of another. *Goldstein v. Georgetown, supra*).

For a discussion of declaratory judgment actions in court as an alternative to a tax abatement in the case of exempt property, see "**Declaratory Judgment Action-Exemption Claims**" appearing at the end of this chapter. *(new paragraph from April 2003 Supplement)*

Poverty or Infirmity. Taxpayers who, because of illness or poverty, are unable to pay some or all of their property taxes may seek a "poverty or infirmity" abatement under 36 M.R.S.A. § 841(2). Section 841(2) permits the municipal officers (the selectpersons or council—not the assessors) "on their own knowledge or on written application" to "make such abatements as they believe reasonable in 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." Each "30-day" tax lien notice sent by the tax collector under 36 M.R.S.A. § 942 must contain a statement that the taxpayer may apply for this type of abatement. 36 M.R.S.A. § 943-A. In addition, 36 M.R.S.A. § 943 requires that the 30-45 day notice of impending tax lien foreclosure contain this message: "If you cannot pay the property taxes you owe please contact me to discuss this notice."

> **Deadlines.** Any abatement on this basis must be made within three years of the commitment of the tax, unless the municipal officers decide to extend the three-year period.

> **Scope of poverty or infirmity abatement.** The purpose of this statute is "to prevent towns from forcing the sale of property in order to collect taxes from those otherwise unable to pay." *Macaro v. Town of Windham,* 468 A.2d 604, 606 (Me. 1983). Therefore, MMA Legal Services attorneys believe that the poverty or infirmity abatement is available only for abatement of taxes assessed on a taxpayer's principal residence, and not for abatement of taxes assessed on other vacant, investment, business, vacation or rental property owned by the taxpayer. Unfortunately, the law provides no clear-cut criteria for municipal officers to use to determine whether a person is "unable to contribute to the public charges." However, a general rule is that the municipal officers should determine the extent to which a taxpayer's reasonable expenses are greater than the taxpayer's income. A copy of MMA's "Poverty Abatement" information packet is included in Appendix 6.

Inability to Pay after Two Years. Under 36 M.R.S.A. § 841(3), if, after two years from the date of assessment, a tax collector is satisfied that a tax upon real or personal property which was committed to him or her cannot be collected because of the "death, absence, poverty, insolvency, bankruptcy, or other inability of the person assessed to pay," the tax collector must notify the municipal officers in writing, under oath, stating the reason why the tax cannot be collected. The municipal officers, after due inquiry, may abate the tax or any part of it.

Small Amount of Personal Property Tax. Title 36 M.R.S.A. § 760-A expressly authorizes the municipal officers to discharge the tax collector from the obligation to collect certain personal property taxes which remain unpaid after the date for perfection of collections. The municipal officers must find that the uncollected amounts are too

small or too burdensome to collect economically. There is no similar abatement authority for real property taxes.

Veteran's Exemption. On written application within one year from the date of commitment, the assessors may grant an abatement to an unremarried widow or minor child of a veteran if the widow or child would be entitled to an exemption under 36 M.R.S.A. § 653(1)(D) but for the failure to file the proper application within the deadline set by § 653. Such an abatement may only be granted if the veteran died during the 12-month period preceding the April 1st for which the tax was committed. This abatement may be granted regardless of the applicant's failure to comply with the § 706 notice requirement.

The Abatement Process

Written Application. Unless the assessors or the municipal officers initiate an abatement, 36 M.R.S.A. § 841 expressly requires that a taxpayer file a written application to request an abatement. See, *Inhabitants of Levant v. County Commissioners of Penobscot County,* 67 Me. 429 (1877). (See Appendix 6 for a sample application for abatement.)

Deadlines. See the previous discussion in this chapter appearing under "Types of Abatement Requests." Compliance with deadlines is jurisdictional and failure of the taxpayer to comply with deadlines is grounds for denial of an application for abatement; deadlines cannot legally be waived. Title 36 M.R.S.A. § 153 provides several rules governing the timeliness of the filing of a document. Where a document required to be filed by the taxpayer by a certain date is mailed by the taxpayer and received by the assessor after that date, it is still considered timely if the postmark date is legible and is on or before the filing deadline. If a deadline for filing falls on a weekend or holiday, § 153 extends the deadline to the next business day.

"True and Perfect List." As discussed in Chapter 2, 36 M.R.S.A. § 706 requires all taxpayers to furnish the assessor(s) with a "true and perfect" list of all the taxable property which they possess as of April 1st in order to be eligible for an abatement, if the assessors request this list in writing by providing direct notice to the taxpayer. Assessors are not required to provide this notice and many do not. Where notice is not provided, a taxpayer is not automatically barred from seeking an abatement for failure to file a list. The "true and perfect list" which the statute requires the taxpayer to furnish does not normally specify property values. At a minimum, the list contains a complete and accurate list or itemization of the taxable property owned or possessed by the taxpayer, without a statement as to the value of the property. *Inhabitants of Orland v. County Commissioners of Hancock County,* 76 Me. 460 (1884).

Under § 706, the assessor(s) may send a written notice to taxpayers to furnish a true and perfect list, and may deliver the notice by mail directed to the taxpayer's last known address "or by any other method that provides reasonable notice to the taxpayer." Posting notice at public locations in the municipality or publication in a local newspaper or in the town report does not constitute reasonable notice to taxpayers. *Farrelly v. Inhabitants of the Town of Deer Isle,* 407 A.2d 302 (Me. 1979); *Great Cove Boat Club v. Town of Eliot,* CV-91-666, CV-93-190, CV-93-193 (Me. Super. Ct., York Cty., May 9, 1994). Because of the cost and administrative burden of mailing notices to all taxpayers, most assessors mail notices only to the large industrial and commercial taxpayers. The notice provided by the assessors should clearly state the effect on the taxpayer's appeal rights if he/she fails to provide a list to the assessor. *See Town of Freeport v. Greenlaw,* 602 A.2d 1156 (Me. 1992).

The third paragraph of § 706 discusses what happens if the assessor(s) sends mailed notice to the taxpayer to submit a perfect list. If the assessors notify a taxpayer of this requirement by mail and the taxpayer fails to respond by the deadline stated in the notice, then that taxpayer is legally prevented from applying to the assessors for an abatement unless the taxpayer subsequently provides the list and convinces the assessors that the taxpayer was unable to furnish it by the original deadline. *Powell v. City of Old Town,* 108 Me. 532 (1911). It is arguable that the failure to file a § 706 list is not a bar to an abatement by the assessors on their own initiative or by the municipal officers, given the language in § 706 which specifically refers only to applications filed with the assessors; § 841(1) makes no distinction, however, and indicates that the filing of the list is a prerequisite to any abatement for overvaluation, error, illegality or irregularity. A taxpayer seeking an abatement on grounds of poverty or infirmity under § 841(2) does not need to file a true and perfect list under § 706 to be eligible for the abatement. Being "unable to furnish" the § 706 list means precisely that. The court has held that "reasonable excuse" or "good cause" is not the statutory meaning of inability to furnish the lists. It is not enough to answer that the information is not available to the taxpayer, or not in the taxpayer's operating files, or that the taxpayer relied on a statement by the assessor's agent that the list was not necessary. *Maine Lumber Co., Inc. v. Inhabitants of Town of Mechanic Falls,* 157 Me. 347, 172 A.2d 638 (1961); *Maine National Bank v. City of South Portland,* CV-90-171 (Me. Super. Ct., Cum. Cty., Sept. 25, 1990). To furnish the true and perfect list to the assessor(s), it is not necessary that the taxpayer personally deliver the list of his property to the assessors. The Maine Supreme Judicial Court has held that delivery of the list by registered mail complies with § 706. *Perry v. Inhabitants of Lincolnville,* 145 Me. 362, 75 A.2d 851 (1950); *Mussey v. White,* 3 Me. 290 (1825). A taxpayer's response to a § 706 notice that it believes in good faith that its property is tax exempt relieves it from having to file a true and perfect list before seeking an abatement. *Town of Embden v. Madison Water District,* 1998 ME 154, 713 A.3d 328. A list which is mailed to the assessor should be considered received by the deadline if it is postmarked on or before the deadline for filing. 36 M.R.S.A. § 153.

The fourth paragraph of § 706 describes the authority of the assessor(s) to request additional information from a taxpayer who has supplied a list or ask questions about the nature, situation and valuation of the taxpayer's property; the taxpayer must respond in writing and swear to the truth of his or her answers if so requested. *Powell v. City of Old Town, supra.* However, the Maine Supreme Judicial Court has held that in order for the assessors to be able to request detailed information from the taxpayer, the assessors first must have sent a § 706 notice to the taxpayer requesting it to furnish a true and perfect list. Where the municipality fails to request a true and perfect list, the taxpayer is not precluded from seeking an abatement. *Town of Embden v. Madison Water District, supra*; *Champion International Corp. v. Town of Bucksport,* 667 A.2d 1376 (Me. 1995).

A person who presented the assessors with a true list of the properties not exempt from taxation, but who refuses to answer all inquiries in relation to the nature and situation of his or her property, as required by the fourth paragraph of § 706, may seek an abatement but is barred from appealing from the decision of the assessor(s). *Powell v. City of Old Town,* 108 Me. 532, 81 A.1068 (1911); *Lambard v. County Commissioners of Kennebec County,* 53 Me. 505 (1866). However, where a person is not "liable to be taxed" on certain property which is exempt from taxation in the municipality (e.g., inventory in the taxpayer's possession and available for sale on April 1st), failure to respond to the assessor's request for additional information about that exempt property will not bar an appeal from the assessor's decision. *Handyman Equipment Rental Co. v. Portland,* 1999 ME 20, 724 A.2d 605; *Town of Embden v. Madison Water District, supra*. Further, while failure to comply with § 706 for nonexempt property will bar an appeal, it does not bar a declaratory judgment action seeking to have certain property declared exempt. *Handyman Equipment Rental Co. v. Portland*, *supra*.

The fifth paragraph of § 706 discusses what happens if the assessors fail to send mailed notice to the taxpayer to submit a perfect list. If notice is not provided directly to a taxpayer by mail, then the taxpayer is not automatically barred by the statute from filing an abatement application even though the taxpayer missed the deadline for filing the list, so long as the taxpayer provides a written list upon the assessors' request; if the taxpayer refuses, the taxpayer is barred from appealing the assessors' decision.

The fact that a taxpayer's sworn statement of his or her property has been accepted by a majority of the board of assessors does not entitle a party to an appeal if he or she later refuses to make a more explicit statement when requested to do so by the board. *Inhabitants of Freedom v. County Commissioners of Waldo County,* 66 Me. 172 (1876). The information provided by the taxpayer is not binding on the assessor, but may be binding on the taxpayer. *Dead River Co. v. Assessors of Town of Houlton,* 149 Me. 349 (1953).

See Appendix 2 for a number of sample forms and letters used by assessors to gather information under § 706.

Burden of Proof/"Manifestly Wrong" Standard. When a taxpayer appeals his or her assessment and requests an abatement, the assessment is not automatically vacated, voided or reduced or "put on hold." *Penobscot Chemical Fibre Co. v. Inhabitants of Bradley,* 99 Me. 263, 59 A.83 (1904). It continues in effect as determined by the assessors and entered in the valuation book until there is a final decision to the contrary by the assessors, the municipal officers, local appeal body, or court.

> **Burden of Proof.** The burden is on the taxpayer to prove that he or she is entitled to an abatement. *Goldstein v. Town of Georgetown,* 1998 ME 261, 721 A.2d 180; *Sweet v. City of Auburn,* 134 Me. 28, 180 A.803 (1935); *Ferry Beach Park Association of Universalists v. City of Saco,* 127 Me. 136, 142 A.65 (1928) and 136 Me. 202, 7 A.2d 428 (1939). The legal presumption is that the assessment as determined by the assessors is valid until the taxpayer proves that it is manifestly wrong. *City of Biddeford v. Adams,* 1999 ME 49, 727 A.2d 346; *Yusem v. Town of Raymond,* 2001 ME 61, 769 A.2d 834; *Town of Southwest Harbor v. Harwood,* 2000 ME 213, 763 A.2d 115; *Town of Steuben v. Lipski,* 602 A.2d 1171 (Me. 1992); *Muirgen Properties, Inc. v. Town of Boothbay,* 663 A.2d 55 (Me. 1995); *Chase v. Town of Machiasport,* 1998 ME 260, 721 A.2d 636; *Delta Chemical Inc. v. Inhabitants of Town of Searsport,* 438 A.2d 483 (Me. 1981); *Kittery Electric Light Co. v. Assessors of Town of Kittery,* 219 A.2d 728 (Me. 1966); *Maine Consolidated Power v. Inhabitants of Town of Farmington,* 219 A.2d 748 (Me. 1966); *Sears Roebuck and Co. v. Inhabitants of the City of Presque Isle,* 150 Me. 181, 107 A.2d 475 (1954). It is not enough for the taxpayer merely to show that the assessors have made an error in judgment, even though such a mistake may result in a lack of uniformity in the assessment of similar property. The taxpayer must show that his property was valued at more than its fair market value, not that other similar properties were undervalued. He/she must come forward with credible, affirmative evidence of just value (i.e., evidence of "arm's length" sale vs. value set as result of negotiations between owner and mayor's office or seller's asking price). *City of Waterville v. Waterville Homes, supra.; Southwest Harbor v. Harwood, supra*. The fact that the assessed value of a particular piece of property in previous years was less is inadmissible and of no weight in trying to determine whether the taxpayer is entitled to an abatement of the current year's taxes. *Shawmut Manufacturing, supra; Penobscot Chemical, supra.* It is the value of that property, as compared to the value of other similar property in the town similarly situated, as shown by actual sales figures or by the opinion of properly qualified experts, that is relevant on the question of true value. *Penobscot Chemical, supra; Shawmut Manufacturing, supra; Sears, supra.*

If, after a careful consideration and thorough analysis of the evidence of value submitted by the taxpayer, the appeals body determines that the taxpayer has submitted credible evidence of substantial overvaluation, the appeals body then has the responsibility to

undertake an independent determination of value. *Northeast Empire Limited Partnership #2 v. Town of Ashland,* 2003 ME 28. *(last sentence from April 2003 Supplement)*

> **"Manifestly Wrong" Standard.** Generally, a person seeking an abatement based on an error in valuation has the burden of proving that the assessed value is "manifestly wrong." *City of Waterville v. Waterville Homes,* 655 A.2d 365 (Me. 1995); *Yusem v. Raymond, supra*.; *Weekley v. Town of Scarborough, supra*.; *Southwest Harbor v. Harwood, supra*. *Northeast Empire Limited Partnership #2 v. Ashland, supra*. *(last case citation from April 2003 Supplement)* The taxpayer must be able to prove indisputably: (1) that the true value of his or her property was substantially overestimated; or (2) that there is evidence of a systematic scheme by the assessors to place a disproportionate share of the tax burden on one taxpayer or one group of taxpayers, such as by assessing certain properties of one class at one percentage of just value and others in the same class at a different percentage ("unjust discrimination"); or (3) that the assessment was fraudulent, dishonest or illegal. *City of Westbrook v. S.D. Warren Co.,* CV-92-425 (Me. Super. Ct., Cum. Cty., Mar. 17, 1993); *Shawmut Manufacturing Co. v. Town of Benton,* 123 Me. 121 (1923); *Cumberland County Power and Light Co. v., Inhabitants of Town of Hiram,* 125 Me. 138 (1926); *Town of South Berwick v. Roaring Brook Consultants,* CV-92-33 (Me. Super. Ct., Cum. Cty., Mar. 4, 1993); *Town of Vienna v. Kokernak,* 612 A.2d 870 (Me. 1992). It is not necessary to prove fraud or intentional overvaluation, however, if the taxpayer can clearly prove that his valuation with reference to just value is manifestly wrong and that he is aggrieved. *Yusem v. Town of Raymond, supra*.; *Chase v. Town of Machiasport*, *supra*; *Wesson v. Town of Bremen*, 667 A.2d 596 (Me. 1995); *Town of Vienna v. Kokernak*, 612 A.2d 870 (Me. 1992). If the taxpayer shows that the property is assessed substantially in excess of its just value, inequality is presumed, and the taxpayer is entitled to relief without obligation to produce further evidence of discrimination. *Spear v. City of Bath,* 125 Me. 27, 130 A.507 (1925). If the taxpayer meets the burden of proof that the assessed valuation is "manifestly wrong," then the assessor(s), the local board of assessment review, the county commissioners, the county board of assessment review or the State Board of Property Tax Review "may make such reasonable abatement" as they consider proper, after undertaking their own determination of just value. 36 M.R.S.A. §§ 841(1), 843, 844, 844-M; *Southwest Harbor v. Harwood, supra.; Quoddy Realty Corp. v. City of Eastport,* 1998 ME 14, 704 A.2d 407; *City of Presque Isle v. DeForest,* CV-93-169 (Me. Super. Ct., Aroo. Cty., March 2, 1994) (where the court found that the authority "to grant such reasonable abatement as the Commissioners think proper" included the authority to raise overvaluation as a basis for granting an abatement, despite the fact that the taxpayer's initial abatement application to the assessor was based only on poverty grounds, because of the de novo nature of the proceedings).

> As long as the appeals body bases its determination of just value on substantial evidence in the record, it may accept some of the evidence and reject other evidence. In making its own determination of "just value," it is not limited to the methodologies suggested by witnesses for the record, even though it is limited to using the evidence before it. *Southwest Harbor v. Harwood, supra.* "Substantial evidence" is that on which a reasonable mind would rely to support a conclusion. The fact that it could support conflicting conclusions does not mean it is not substantial. *Forbes v. Town of Southwest Harbor,* 2001 ME 9, 763 A.2d 1183; *Town of Vienna v. Kokernak,* 612 A.2d 870 (Me. 1992); *Town of Steuben v. Lipski*, 602 A.2d 1171 (1992).

Section 848-A Defense of Assessment. Title 36 M.R.S.A. § 848-A provides that, when an assessment is challenged, "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 assessment ratio of the municipality or primary assessing area exists." It is not completely clear what the term "relevant assessment ratio" means (i.e., the certified ratio, the average ratio, the State ratio, or some other ratio). There also appears to be some confusion about when the § 848-A defense applies. For a brief discussion of § 848-A, see materials prepared by Robert J. Crawford, Esq. entitled "Property Tax Appeals-A Practitioner's Primer" for the Maine Bar Association "Municipal Law Pitfalls and Pointers" seminar text, April 6, 2001.

For discussion of the appropriate ratio to apply to adjust the market value of a property that is being newly assessed, see *City of Westbrook v. S.D. Warren Co., supra.*

Notice of Decision/Automatic Denial ("Deemed Denied"). Within ten days after the assessors or municipal officers take final action on an application for an abatement, they must give notice of their decision in writing to the person applying. (See Appendix 6 for sample decisions.) The notice must state that the applicant has 60 days from the date notice is received to file an appeal. It also must identify the board or agency authorized to hear the appeal. If they fail to give written notice of their decision within 60 days from the date of filing a written application, the application shall be deemed to have been denied and the applicant may appeal as provided elsewhere in the statutes, unless the applicant has consented in writing to further delay. 36 M.R.S.A. § 842. (But see *Town of Vienna v. Kokernak,* 612 A.2d 870 (Me. 1992), where agreement to delay was implied, and *KNL Associates and Centralway Realty v. Assessor of City of Lewiston,* CV-93-25 (Me. Super. Ct., Andro. Cty., Feb. 16, 1994), where the court found that an exchange of correspondence between the taxpayer and the assessor several days after the 60th day following filing of the abatement application constituted an agreement to extend the deadline for issuing a written decision.) This section does not apply to applications for abatements based on poverty or infirmity. (For two cases in which the court found a reason to remand the abatement appeal for a hearing and findings by the county commissioners rather than find that a "deemed denial" was not appealed within the

required deadline, see *Christian Fellowship and Renewal Center v. Town of Limington,* 2001 ME 16, 769 A.2d 834, and *Rome and Carmel Forest Corp. v. Town of Rome*, CV-95-188 (Me. Super. Ct., Kenn. Cty., Jan. 9, 1996).)

Certificate of Abatement. As required by 36 M.R.S.A. § 841(5), whenever an abatement is approved, the authority granting the abatement must certify the abatement in writing to the tax collector. The certificate of abatement discharges the tax collector from further obligation to collect the abated tax. (See Appendix 6 or a sample certificate of abatement). The abatement certificate should indicate whether any accrued interest is being abated as well as the amount of the principal tax being abated or amount of valuation reduction. It is arguable that a taxpayer who chooses not to pay the tax in full before interest starts to accrue is obligated to pay all of the interest regardless of whether some or all of the principal amount of the tax is abated, at least where the abatement is granted for reasons other than poverty or infirmity.

Record of Abatement. Title 36 M.R.S.A. § 841(5) also provides that when an abatement of taxes is made, except for poverty or infirmity abatements, a record setting forth the name of the party or parties receiving the abatement, the amount of the abatement and the reasons for the abatement, shall, within 30 days after granting the abatement, "be made and kept in a suitable book form open to the public at reasonable times." (Records of abatements based on an applicant's poverty or infirmity should not be displayed to the public because to do so would violate the applicant's privacy rights, resulting in potential liability for the municipality and its employees.) A report of abatements must be made to the municipality at its next annual meeting, or to the mayor and aldermen of cities by the first Monday in each March.

Interest. Title 36 M.R.S.A. § 506-A governs interest paid on abatements. If a taxpayer who has already paid his or her tax is granted an abatement, the taxpayer must be reimbursed the amount of the overpayment plus interest on that amount from the date of overpayment at a rate to be established by the municipality (i.e., legislative body). The rate set by the municipality cannot exceed the rate established by the legislative body for delinquent taxes or be less than that rate reduced by 4%. For example, if a town voted 6.75% as the rate for overdue taxes, the minimum rate of interest it could establish for abatements would be 2.75% (6.75% minus 4%). If no rate is set, the statute requires the municipality to pay the rate established for interest paid on delinquent taxes.

Section 506-A is subject to several interpretations regarding which year's interest rate applies when an abatement is finally granted. The majority of the attorneys in MMA's Legal Services Department and a number of respected private municipal attorneys believe that the interest rate paid on abated taxes is the rate approved by the legislative body in the year that the tax in question was assessed, rather than the rate approved in the year when the tax is finally abated. For example, for a tax assessed in 2001 and abated in

2002, it would be the § 506-A interest rate approved in 2001 which would be paid on an overpayment of 2001 taxes, not the rate set in 2002.

Source of Funding to Pay Abatement Refunds and Interest. Many municipalities incorrectly assume that they may automatically use money generated through overlay (see Chapter 2) to pay abatement refunds and interest. This is not legally correct. The municipality's legislative body (town meeting or town or city council) first must appropriate the money used to pay such abatement refunds and interest and identify the source of the funding. This can be done in a number of ways: by appropriating a specific amount of money generated from overlay to be used for abatement refunds; by appropriating a certain amount of money to an "abatement account" and indicating the source of the money (e.g., surplus, raised from taxes); or by appropriating money to some other account (e.g., "Miscellaneous," "Contingency" or "Administration") which historically has been used to pay abatement refunds and indicating the source of funding.

"Last Minute" Abatement Applications Where Tax Lien is About to Foreclose. As previously note, 36 M.R.S.A. § 841(1) allows a taxpayer to file an application with the municipal officers for a tax abatement on the basis of "error, irregularity, or illegality" between one year and three years from the commitment date of that tax. If the taxpayer's application is filed close to the automatic foreclosure date of a tax lien which has been recorded against the property for that tax, it is possible that, due to the meeting schedule of the municipal officers, they will not be holding a regular meeting to consider the application until after the automatic foreclosure date of the lien. In that case, they may schedule a special meeting to accommodate the taxpayer, but are not legally obligated to do so. If they do not hold a special meeting and the lien forecloses before they make a final decision on the application, then it is arguable that the application becomes "moot" (i.e., there is nothing left for them to decide, because the lien foreclosure satisfied the debt owed by transferring title to the municipality). However, it is probably better for the municipal officers to continue their review, because if they conclude that the tax was illegal, then the lien would also be illegal and would not legally have foreclosed.

This issue also can arise in connection with poverty abatement applications. See MMA's "Poverty Abatement" Information Packet in Appendix 6. It generally won't be an issue in connection with an application for an abatement based on overvaluation. Because of the deadlines for filing an application with the assessor, for the assessor's decision, for filing an appeal from the assessor's decision, and for the decision by the Appeal Board/County Commissioners, the abatement process for an overvaluation claim will normally be completed before the foreclosure of a lien related to the challenged tax.

Appeal to Local Board of Assessment Review

Establishment. State law authorizes municipalities to establish local boards of assessment review ("B.A.R.") to hear appeals from the abatement decisions of the

assessor(s) and municipal officers. 36 M.R.S.A. § 843. Any municipality may adopt a board of assessment review at a meeting of its legislative body held at least 90 days before the annual meeting. The board shall consist of three members and two alternates appointed by the municipal officers for staggered three-year terms. Towns may by ordinance provide for a board of assessment review consisting of five or seven members and up to three alternates, serving staggered terms not exceeding five years. 30-A M.R.S.A. § 2526(6). Title 30-A M.R.S.A. § 2691 ("board of appeals" provisions) governs the procedure of such a board. A city may establish such a board in accordance with 30-A M.R.S.A. § 2552. Sample ordinance and charter provisions for establishing a board of assessment review are included in Appendix 6.

Appeal Deadline; Procedures. Where a municipality has established a local board of assessment review, if the assessors or municipal officers refuse to make the abatement asked for, the applicant may apply in writing to the board 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. The time period for filing an appeal with the board begins to run from the date the taxpayer received notice of the decision only if the notice contained a statement of the taxpayer's appeal rights. *Wesson v. Town of Bremen,* CV-96-59 (Me. Super. Ct., Linc. Cty., Feb. 14, 1997). (See Appendix 6 for a sample application form.)

As noted earlier, the board has no authority to waive the appeal application deadlines under § 841, § 842 and § 843. If a person failed to file an appeal with the assessor within 185 days from the commitment date, the board cannot waive the taxpayer's failure to make a timely initial appeal application.

If the board thinks the taxpayer is over-assessed, the board must grant whatever abatement the board thinks proper and reasonable after conducting a "de novo" hearing. 36 M.R.S.A. § 843. (*See City of Biddeford v. Adams,* 1999 ME 49, 727 A.2d 346, for an approach deemed to be "reasonable.") If an abatement is granted based on unjust discrimination, an abatement equal to the amount by which the tax being appealed exceeded the tax for the previous year would be appropriate. *City of Biddeford v. Adams, supra., citing Farrelly v. Town of Deer Isle, supra*.

Sample rules of procedure for conducting an abatement hearing are included in Appendix 6. The board also is governed by the appeal procedures in 30-A M.R.S.A. § 2691.

Nature of Board Proceedings. A tax abatement proceeding is a "combination of appellate review and de novo hearing." The taxpayer has the "burden of persuading the assessment review board that the assessor's valuation was 'manifestly wrong'." The taxpayer must provide sufficient evidence to overcome the presumption that the assessor's valuation was valid. If this is done, then the assessment review board must "undertake an independent evaluation of fair market value based on all relevant evidence presented." The board reviews the decision of the assessor, "but does so on an

independent review of evidence, including evidence newly presented at its hearing." *Stewart v. Town of Sedgwick,* 2000 ME 157, 757 A.2d 773. Compare *Stewart* with *Quoddy Realty Corp. v. City of Eastport,* 1999 ME 14, 704 A.2d 407, *Dodge v. Town of Norridgewock,* 577 A.2d 346 (Me. 1990), and *Town of Vienna v. Kokernak,* 612 A.2d 870 (Me. 1992).

The board has no authority to remand a case to the assessor or municipal officers for further consideration or to re-compute the tax. *City of Biddeford v. Adams, supra*; *South Portland Associates v. City of South Portland,* 550 A.2d 363 (Me. 1988); *Muirgen Properties, Inc. v. Town of Boothbay,* 663 A.2d 55 (Me. 1995). It is important for the assessors or municipal officers to participate in this hearing and get information into the record to support the decision that they made and that is being appealed; they must ensure that the record includes information that supports the substantive valuation as well as any jurisdictional or procedural defenses that support the original decision.

Payment of Taxes Prerequisite to Filing Appeal. If an abatement is filed with a B.A.R. by a taxpayer for property which has a valuation of $500,000 or more, the taxpayer must pay either an amount of current taxes equal to the amount of tax paid in the immediately preceding tax year (so long as this does not exceed current year taxes) or the amount of current year taxes not in dispute, whichever is greater. The appeal process is suspended if the applicable amount of tax is not paid by or after the due date or in accordance with a mutually agreed upon written schedule of payments. An appeal process that already has begun is suspended if the due date for payment of a tax or the written schedule date expires without payment of taxes, whether the taxes are due for the year under appeal or for a subsequent tax year. 36 M.R.S.A. § 843(4). Failure to pay does not result in permanent dismissal of the appeal. *Interstate Food Processing Corp. v. Town of Ft. Fairfield,* 1997 ME 193, 698 A.2d 1074. The law is unclear whether such a suspension may continue indefinitely.

Appeals Checklist. Before the board gets to the issue of whether a taxpayer has been "over-assessed" or whether there is an "error, illegality, or irregularity" which would justify an abatement, it must determine whether the taxpayer has satisfied all of the preliminary requirements for filing an appeal:

- If the taxpayer filed a written application, was the initial abatement application filed with the proper person or board and within the relevant application deadline under § 841(1)?
- Did the assessors or municipal officers wait so long to act on the initial abatement request that their inaction resulted in an automatic denial under 36 M.R.S.A. § 842? If so, did the taxpayer file an appeal within the § 842 deadline?
- Did the taxpayer file a timely appeal under § 843 from the decision of the assessors or municipal officers?
- Did the proper person file the appeal?

- Did the taxpayer submit a "true and perfect list" to the assessors where a request for such a list was made in writing by the assessors and provided directly to the taxpayer by mail or otherwise under 36 M.R.S.A. § 706?
- Did the taxpayer answer any requests from the assessors for additional, detailed information under 36 M.R.S.A. § 706?
- Did the taxpayer pay the amount of the tax required by 36 M.R.S.A. § 843(4) as a prerequisite to pursuing the abatement appeal?
- If the abatement application claims that the property is exempt from property taxation, did the taxpayer file an application for an exemption prior to April 1st?

All of these questions pertain to the local board of assessment review's jurisdiction to hear and decide a particular appeal. If the answer to any of these questions is "no," then the board lacks jurisdiction and should deny the abatement appeal on those grounds.

In analyzing evidence submitted on the issue of the property's value, the board must be careful to determine whether sales figures are truly comparable and reflect the open market, whether any opinion evidence is credible, and what assessment methodology was actually used by the assessor and the exact nature of any adjustment made.

For a discussion of other decision-making issues and requirements, see Chapter 9 of this manual and also MMA's *Manual for Local Land Use Appeals Boards*. See Appendix 6 of this manual for sample decisions.

Reconsideration. Title 30-A M.R.S.A. § 2691 (3)(F) authorizes an appeals board to reconsider a previous decision and conclude the reconsideration process within 30 days of the original decision. For a discussion of reconsideration issues and cases interpreting this statute, *see Forbes v. Town of Southwest Harbor,* 2001 ME 9, 763 A.2d 1183, and MMA's *Manual for Local Land Use Appeals Boards*.

Appeals; "Deemed" Denial. 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. 36 M.R.S.A. § 843. If the board fails to give written notice of its decision within 60 days of the date the application was filed, the application is deemed to be denied unless the applicant agrees in writing to further delay.

With regard to non-residential property or properties with an equalized municipal valuation of $1,000,000 or greater (either separately or in the aggregate), an appeal from a decision by the assessors or municipal officers must first go to the B.A.R. Either party then may appeal the decision of the B.A.R. to the State Board of Property Tax Review within 60 days after notice of the decision being appealed or within 60 days after the appeal is deemed denied. 36 M.R.S.A. § 843; 36 M.R.S.A. § 271. "Non-residential property" is defined as "property that is used primarily for commercial, industrial or business purposes" (but not including unimproved land associated with such a use), and

includes property of a nonprofit corporation used for elderly housing and services. *Ellen M. Leach Memorial Home v. City of Brewer,* 1998 ME 118, 711 A.2d 149.

Appeal to County Commissioners

Generally. If the local assessors or municipal officers refuse to make the abatement requested, the applicant may apply to the county commissioners if the municipality has not created a board of assessment review or been designated a primary assessing area. The commissioners themselves may hear appeals or, under 36 M.R.S.A. §§ 844 and 844-M, may establish a county board of assessment review to hear these appeals. Such a county board has the same powers as a local board of assessment review.

Procedure. The abatement application must be filed within 60 days after notice of the decision being appealed or within 60 days after the application is deemed denied. 36 M.R.S.A. § 844. The county commissioners conduct a combined appellate and de novo review. *Stewart v. Sedgwick, supra.* They cannot remand a matter for further consideration by the local assessors; they may only grant or deny the abatement. *Muirgen Properties, Inc. v. Town of Boothbay,* 663 A.2d 55 (Me. 1995). If the Commissioners think that the applicant is overassessed, they must grant a reasonable abatement plus costs, to be paid out of the municipal treasury. The commissioners make their own determination of value based on the record which they create. *Quoddy Realty Corp. v. City of Eastport,* 1998 ME 14, 704 A.2d 407. Therefore, participation by the assessors or municipal officers is crucial to their success in having their decision upheld. They must ensure that the record includes information which supports the substantive valuation as well as any jurisdictional or procedural defense which supports the original decision. The commissioners may require the assessors or municipal clerk to produce the valuation by which the assessment was made or a copy of it. If the applicant fails to prove that he or she is entitled to an abatement, the commissioners shall allow costs to the municipality, taxed as in a civil suit in the Superior Court, and issue their warrant of distress for collection of the amount due.

Jurisdiction/Nonresidential Property. The owner of nonresidential property with an equalized municipal value of $1,000,000 or greater may choose to appeal a decision of the assessors or municipal officers directly to the State Board of Property Tax Review rather than to the county commissioners. 36 M.R.S.A. § 271 and § 844.

Payment of Taxes Prerequisite to Filing Appeal. As with appeals to the local board of assessment review, payment of taxes is a prerequisite to filing or prosecuting an appeal for an abatement where the property has a valuation of $500,000 or more. 36 M.R.S.A. § 844(4). The requirements of § 844(4) are generally the same as those for a B.A.R. in § 843(4) discussed above. However, § 844(4) does not provide for a due date which is based on an agreed written payment schedule. It also does not authorize suspension of the

appeal for non-payment of taxes due for a subsequent year, only taxes for the year being appealed (current year).

Appeals Checklist. The county commissioners are governed by the same jurisdictional issues as a local appeals board. If the commissioners cannot make a positive finding on each of the jurisdictional questions listed in the preceding discussion regarding boards of assessment review, then they too must deny the abatement request.

Appeals. Either party may appeal from the decision of the county commissioners to the Superior Court within 30 days under the provisions of Rule 80B of the Maine Rules of Civil Procedure. If the commissioners fail to give written notice of their decision within 60 days of the date the application is filed, the application is deemed denied, unless the applicant agrees to further delay in writing. 36 M.R.S.A. § 844.

If the record of the commissioners for the abatement of taxes is defective, they may amend it. If the application is too general, this is immaterial if it is apparent that the commissioners had all essential matters before them. *Inhabitants of Orland v. County Commissioners, Hancock,* 76 Me. 462 (1884). Where the county commissioners ordered the abatement of a tax but had no jurisdiction because the petition was defective, such a decision may be reversed by the Superior Court on appeal. *Inhabitants of Fairfield v. County Commissioners, Somerset,* 66 Me. 385 (1876). If the county commissioners grant an abatement in the case of an applicant who was legally barred from such appeal for failure to answer all proper inquiries put to him by the assessors when he filed his § 706 list, their decision could be overturned on appeal. *Inhabitants of Levant v. County Commissioners of Penobscot County,* 67 Me. 429 (1877). Likewise, if, on a complaint for the abatement of taxes, the county commissioners err in matters of law, their proceedings may be reviewed by a Superior Court on appeal and reversed. *Wheeler v. County Commissioners, Waldo,* 88 Me. 174, 33 A.983 (1895).

Appeals to State Board of Property Tax Review

Generally. Title 36 M.R.S.A. § 271 authorizes the creation of a State Board of Property Tax Review. The governor appoints its 15 members, who are organized into three panels for the purpose of hearing appeals.

Jurisdiction. The State Board is empowered to hear and decide appeals from decisions of the local assessment review board or the assessors or municipal officers under M.R.S.A. §§ 843 and 844, as previously described. In this role, it is able only to grant or deny abatements, and lacks the authority to remand a case to the local assessor to re-compute the tax assessment. *City of Biddeford v. Adams,* 1999 ME 49, 727 A.2d 346. It also has jurisdiction over appeals from decisions by local assessors under the Tree Growth Tax Law and the Farm and Open Space Law. In primary assessing areas, it may hear an appeal from a denial of a poverty abatement. In addition, § 272 authorizes the State

Board to hear appeals by a municipality from decisions by Maine Revenue Services regarding the municipality's equalized valuation or failure to meet minimum assessing standards.

Nature of Board Proceedings. The State Board's proceedings are de novo, and so the State Board will base its decision on the record it creates at its own hearing. Therefore, it is crucial for the assessors or municipal officers to participate in this hearing and get information into the record to support the decision that they made and which is being appealed, both on the substantive valuation issue and any procedural or jurisdictional defenses that support the municipal decision. However, the Maine Supreme Judicial Court has held that the State Board may accord some deference to the determination of the municipal assessors. *Central Maine Power Co. v. Town of Moscow,* 649 A.2d 320 (Me. 1994).

Payment of Taxes Prerequisite to Filing Appeal. As with appeals to the local board of assessment review, payment of taxes is a prerequisite to filing or prosecuting an appeal where the property has a valuation of $500,000 or more. 36 M.R.S.A. §§ 843(4) and 844(4). These requirements were discussed earlier in this chapter.

State Valuation Appeal Procedure

Regarding a municipality's State valuation, the State Tax Assessor is required to "equalize and adjust the assessment list of each town, by adding to or deducting from it (whatever) amount (is necessary to) make it equal to its just value as of April 1st." A notice of a municipality's proposed valuation is sent annually by certified mail by the State Tax Assessor to the chairperson of the board of assessors and to the chairperson of the board of selectpeople on or before October 1st. If a municipality is unhappy with its proposed State valuation, it must appeal to the State Board of Property Tax Review within 45 days of receiving the State Tax Assessor's notice. If a municipality fails to appeal, the State Tax Assessor's determination becomes final. Once that figure is certified to the Secretary of State, it must be used for all computations required by law to be based on State valuation with respect to municipalities. 36 M.R.S.A. §§ 208 and 272. (See Appendix 7 for a list of *Maine Townsman* articles which includes several relating to State valuation appeals.) The State agency rules of procedure governing the development of the State valuation figure for a municipality are in Chapter 201 of the Code of Maine Rules. (See Appendix 7 for the website address for State agency rules.)

Before pursuing a formal appeal, the municipality's representatives should request a meeting with Maine Revenue Services officials to discuss why the municipality disagrees with its proposed State valuation. Such a meeting can sometimes result in adjustments acceptable to the municipality and avoid the need for a formal appeal.

To win a formal appeal, the municipality will have to show that the proposed State valuation is inaccurate. It should be remembered that the State valuation is designed to represent the market value of the municipality's taxable property *two years previously.* The 2003 State valuation, for example, is based on an analysis of the market value of all taxable property in the municipality in 2001. Therefore, to successfully appeal a proposed 2003 State valuation, the municipality would have to show that the market value of the municipality in 2001 was less than reported by Maine Revenue Services. One argument to support such a position would be that the sales ratio data used by Maine Revenue Services did not appropriately segregate different types of property in the municipality, so that the adjustment ratio applied by Maine Revenue Services to the various types of property is skewed to the extent that it was based primarily on the sales of the properties in the municipality which are part of the most rapidly inflating real estate market. Extraordinary external influences on the market value that may not have been picked up in the Maine Revenue Services' sales ratio study, such as the destruction by fire of a major piece of property, also may provide a municipality a good argument at appeal. For two Maine Supreme Court cases involving State valuation appeals, see *Town of Thomaston v. Bureau of Taxation,* 490 A.2d 1180 (Me. 1985) and *Bureau of Taxation v. Town of Washburn,* 490 A.2d 1182 (Me. 1985).

Appeals to Superior Court

Either party may appeal to the Superior Court from the decision of a local board of assessment review, the county commissioners, the county board of assessment review or the State Board of Property Tax Review. For non-residential property with an equalized municipal value of $1,000,000 or greater, if the municipality has a B.A.R., then the appeal goes from the assessor to B.A.R. to State Board to Superior Court. If there is no local B.A.R., then an appeal for that type of property goes from the assessor to the county commissioners or State Board (the taxpayer's choice) and then to the Superior Court.

Appeals generally must be taken within 30 days after notice of the decision from which the appeal is being taken, or within 30 days after the application shall be deemed to have been denied. 36 M.R.S.A. § 271, § 843, § 844 and Rule 80B of the Maine Rules of Civil Procedures.

The Superior Court reviews the record and decision of the lower level appeal body to determine whether that decision was supported by substantial evidence in the record prepared by that body. Therefore, it is essential that the assessors and municipal officers submit adequate documentation to support their decision and actively participate in the lower level appeal hearing. Because the B.A.R., the county commissioners, and the county board are not strictly appellate bodies, because they conduct a type of de novo hearing, the courts will directly review their actions, not the action of the local assessor(s). *Town of Vienna v. Kokernak,* 612 A.2d 870 (Me. 1992); *Town of Steuben v. Lipski,* 602 A.2d 1171 (Me. 1992); *Camps Newfound/Owatonna v. Town of Harrison,*

604 A.2d 908 (Me. 1992); *Dodge v. Town of Norridgewock,* 577 A.2d 346 (Me. 1990); *Goldstein v. Town of Georgetown*, 1998 ME 261*,* 721 A.2d 180; *Christian Fellowship and Renewal Center v. Town of Limington,* 2001 ME 16, 769 A.2d 834; *Town of Southwest Harbor v. Harwood,* 2000 ME 213,763 A.2d 115; *Yusem v. Town of Raymond,* 2001 ME 61, 769 A.2d 834; *Weekley v. Town of Scarborough,* 676 A.2d 932 (Me. 1996). The Superior Court must uphold the lower appeals body's decision if, after reviewing that body's record, it finds that there was no abuse of discretion, no error of law, and no findings unsupported by substantial evidence in the record as to whether the taxpayer has met his or her burden of proof. *Roaring Brook Consultants, supra; Sherwood v. Town of Kennebunkport,* 589 A.2d 453 (Me. 1991); *Northeast Empire Limited Partnership #2 v. Ashland, supra. (last case citation from April 2003 Supplement)* If it finds that the valuation was manifestly wrong, it cannot determine just value or grant an abatement. The court must remand to the board which conducted the de novo review and whose decision was appealed. *Weekley v. Town of Scarborough, supra,* at 934.

Out-of-Court Settlement of Valuation Appeal by Taxpayer

In a case where a taxpayer is seeking to have his or her valuation reduced, the attorneys for the municipality and the taxpayer may be able to agree on a revised valuation figure and may want to reach an out-of-court settlement approved by the municipal officers. It is the view of MMA's Legal Services Department that such a settlement would be unauthorized unless it were adopted by the court as its judgment. This is because the municipal officers have no statutory authority to address claims of overvaluation and because there is no clear authority for a board of assessment review or the county commissioners to reconsider and revise a decision on an appeal, especially after a Superior Court appeal has been filed.

Parties to Appeal/"Standing" to Appeal

Parties. Local assessors are not proper "parties" to an abatement proceeding based on a claim of overvaluation. They may not be named as a party by someone else and cannot bring an appeal themselves. The municipality and the taxpayer are the proper parties *Shawmut Inn, supra; Tax Assessors of Sebago v. Drummond,* 402 A.2d 469 (Me. 1979); *Town of Bristol v. Eldridge***,** 392 A.2d 37 (Me. 1978).

When an abatement is sought on the basis of a claimed exemption, the assessor must be named as a party in that case because only the assessor may legally grant an exemption. *Connecticut Bank and Trust Co. v. City of Westbrook,* 477 A.2d 269, 271 (Me. 1984).

Subsequent Purchaser's Standing to Appeal. A subsequent purchaser may pursue an abatement and administrative appeal where the assessed owner furnished a property list

as required under 36 M.R.S.A. § 706. *Freeport Mineral Co. v. Inhabitants of Bucksport,* 437 A.2d 642 (Me. 1981).

Consolidation of Appeals

Taxpayers may present abatement requests individually or join together for a consolidated abatement proceeding under 36 M.R.S.A. § 849. *City of Biddeford v. Adams, supra; Capodilupo v. Town of Bristol,* 1999 ME. 96, 730 A.2d 1257.

Appeal Involving Multiple Parcels

A single appeal may cover several properties provided they are in the same ownership. *Town of Falmouth v. MMC,* State Board of Property Tax Review, Docket No. 2000-001, Nov. 14, 2000.

Declaratory Judgment Action—Exemption Claims

The statutory abatement process is not the exclusive means for challenging the validity of an assessment. When an exemption is claimed or where it otherwise is claimed that the entire tax is void (i.e., the tax itself is unlawful or the taxing authority is invalid), the taxpayer may be able to pursue *(word formerly "*choose*," prior to April 2003 Supplement)* either an abatement proceeding or a declaratory judgment action in Superior Court, or both. *Credit Counseling Centers, Inc. v. City of South Portland*, 2003 ME 2 *(last citation from April 2003 Supplement)*;. *Handyman Equipment Rental Co. v. City of Portland, supra*; *Town of Embden v. Madison Water District*, *supra; Maine Central Railroad Co. v. Town of Dexter*, 588 A.2d 289, 293 (Me. 1991); *Camps Newfound/Owatonna Corp. v. Town of Harrison,* 1998 ME 20, 705 A.2d 1109; *Berry v. Daigle,* 322 A.2d 320 (Me. 1974); *S.D. Warren Co. v. Town of Standish,* 1998 ME 66, 708 A.2d 1019; *Capodilupo v. Town of Bristol, supra* (holding that taxpayers who alleged that town's revaluation assessment practices failed to achieve just value and failed to conform to State assessing standards were not entitled to file a declaratory judgment action to challenge valuation of property, because allegations essentially were that tax was excessive, not that it was void). Compliance with § 706 notice requirements is not a prerequisite to a declaratory judgment action. *Handyman Equipment Rental Co. v. City of Portland, supra*.

Effect of Failure to Appeal One Year's Valuation on Taxpayer's Right to Appeal Valuation of Same Property in Subsequent Year

If a taxpayer seeks an abatement of his or her valuation in one year and the abatement is denied or only partially granted, that abatement decision governs the valuation for that

tax year. Each tax year is a "new ball game," so the failure to pursue an appeal of the previous year's valuation will not legally prevent the taxpayer from seeking an abatement of a subsequent year's valuation. For example, where a taxpayer's abatement application is only partially granted for a 2000 tax, the taxpayer's failure to appeal further doesn't mean that he/she can't seek an abatement of the 2001 valuation of the same property. However, even if the taxpayer is successful in 2001, it won't change the valuation for 2000.