

MAINE STATE LEGISLATURE

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Final Report

of the

*Commission to Study the
Statutory Procedures for
Local Property Tax
Abatement Appeals*

December 16, 1993





MAINE STATE LEGISLATURE
Augusta, Maine 04333

December 22, 1993

TO: Rep. Dan Gwadosky, Chair, Legislative Council

FROM: Rep. Bob Tardy, Chair, Commission to Study the Statutory Procedures
for Local Property Tax Abatement Appeals *BT/KMM*

RE: Final Report

Enclosed is the final report of the Commission to Study the Statutory Procedures for Local Property Tax Abatement Appeals. The Commission met diligently in its efforts to consider reforms to the appeals process and we have included with the report proposed legislation to implement our recommendations. Should you, other legislators or any other interested parties desire to go further in this area or amend our recommendations in any way, I am sure that the Joint Standing Committee on Taxation will take these concerns into consideration during its work on the bill.

On behalf of all of the people who worked on and with the Commission during its deliberations, I want to thank you and the people of Maine for the opportunity to review this important area of state property tax law. While additional work is needed, we hope we have begun the process of change with this report.

Enclosure

WPP1377/8

Membership

Rep. Robert J. Tardy, Chair

Senator John E. Baldacci

Rep. Guy R. Nadeau

Michael J. Austin

Elbridge Cleaves

F. Paul Frinsko

Stephen F. Holt

Roland D. Martin

Toby Hall (resigned)

Staff

Kevin M. Madigan

Office of Fiscal & Program Review

Process

The Commission to Study the Statutory Procedures for Local Property Tax Abatement Appeals was established by 1993 Resolves, Chapter 41. The Commission consisted of 9 members appointed jointly by the President of the Senate and the Speaker of the House of Representatives, including Legislators, county and municipal officials and large and small taxpayers. The primary purposes of the Commission were to:

- revise current statutory procedures for local property tax abatement appeals (if needed);
- develop a process for hearing and deciding appeals that is clear, comprehensive and efficient;
- develop a process that results in consistent, equitable and timely decisions; and
- consider reforms to appeals procedures and the hierarchy of appellate forums.

Additional study issues were referred to the Commission by the Joint Standing Committee on Taxation based on specific legislation that appeared relevant to the purposes of the Commission. These issues included the following:

- Make-up and operating procedures of the State Board of Property Tax Review (LD 1288).
- Increase threshold for appeals to State Board of Property Tax Review from \$500,000 to \$1,000,000 (LD 510).
- Define "Just Value" of Residential Property (LD 557).
- Allow property tax deferral in lieu of property tax abatement (LD 1190).
- Establish a Uniform Method for Taxation of Personal Property (LD 1234).
- Clarify Definition of Taxable Personal Property (LD 1241).
- Tax Assessment Practices of Municipalities Regarding Mobile Homes (LD 1539).
- Payment of Taxes Prior to Appeal (LD 410; PL 1993, C. 242).

The Commission met various times between October and December. One public hearing was held at the Maine Municipal Association's annual meeting in Portland which generated valuable testimony from the many assessors and

municipal officials attending. Another full day was spent receiving testimony from members of the State Board of Property Tax Review and their legal counsel. After much discussion and deliberation the Commission finished its work on December 16, 1993 with the submission of this report and proposed legislation to implement its recommendations.

Recommendations

The Commission recognizes that most of the problems associated with the State Board of Property Tax Review have been administrative rather than substantive. A decrease in available funding left the Board shorthanded both with its own personnel and its assigned representatives from the Attorney General's Office. Jurisdictional issues required full Board meetings that would be better spent on substantive issues. Due to certain statutory requirements, additional time was spent dealing with various small appeals that should not have to be addressed by the Board. To resolve these issues the Commission makes the following recommendations:

- Allow the Board to hire an Executive Director;
- Increase the threshold for appeals to the Board to \$1,000,000;
- Redefine who appeals to the Board and when appeals can be made.

The Commission strongly believes that an Executive Director of the State Board of Property Tax Review can reduce considerably the existing administrative concerns. The position would have to be filled by someone knowledgeable in the field of taxation, assessing or law and the person hired would also serve as Secretary to the Board. Working in conjunction with the Chair, the Executive Director would review and decide jurisdictional issues and notify all parties of a determination within 10 days of one being made. Such a position would also give the Board a "permanent" location to send correspondence, conduct meetings, work with other State agencies, etc. While the position would not be inexpensive to establish, the Commission has recommended that the Board establish a filing fee schedule in an effort to offset some or all of the additional General Fund costs. This recommendation alone should remove most of the existing uncertainty surrounding the Board.

A second important recommendation affecting the State Board of Property Tax Review is to increase the threshold for appeals to the Board. Currently set at \$500,000, the amount is too low after years of double digit property valuation increases. The Board was established primarily to hear appeals from larger, more complex taxpayers that part-time local assessors or boards of appeals might not feel fully capable of addressing. A periodic increase in the threshold should allow the Board to maintain its standard of hearing higher level appeals. At the same time the threshold is being raised, the Commission has recommended that the term

"nonresidential property" be defined. The proposed definition is more classification than anything. It is intended to ensure that Maine property owners who are not residents of Maine cannot appeal their camp or summer home assessments to the State Board. While this has not been a major problem in the past, testimony indicated that some coastal properties were easily exceeding the threshold and one non-resident of Maine had actually tried to appeal the assessment of his property as an owner of "nonresidential property".

A related concern involves who can automatically appeal to the Board. Existing statutory authority requires residents of a Primary Assessing Area to appeal in this way, which means that an appeal involving relatively minor amounts must go to the Board. Originally this concept made more sense because Primary Assessing Areas were envisioned to be large districts covering various municipalities. In actuality, three of the four Primary Assessing Areas are single municipalities and the fourth is the Unorganized Territory which is managed and treated by the State Tax Assessor as a single unit for state tax purposes. Rather than have their own local board of assessment review or have access to the County Commissioners, these municipalities have a different process altogether. The Commission believes that there is no overriding need for this other process and that the State Board of Property Tax Review should focus its attention on other matters. Therefore, Primary Assessing Areas will be allowed to establish their own boards of assessment review or use the County Commissioner process just like every other municipality.

A final Board related recommendation is the proposal to further review the State Board of Property Tax Review by the Taxation Committee prior to June 30, 1995. This is based on a discussion by Commission members on how best to handle the existing backlog of appeals. Some felt that a smaller board meeting more frequently would be best. Other members felt that the existing 3 panels of 5 members each could reduce the backlog more effectively, especially if the other Commission recommendations were approved. The final consensus was to give the Board 2 years and the issue would be revisited to see if the new changes made an impact on the backlog.

Regarding the appeals process itself, the Commission has made two specific recommendations:

- Eliminate appeals to the State Board of Property Tax Review for appeals that are deemed denied by a local board of assessment review or the County Commissioners; and
- Allow the County Commissioners to establish a county board of assessment review.

Neither of these is a major change, but the Commission hopes that if adopted, they will improve the appeals process.

By eliminating appeals to the State Board of Property Tax Review in deemed denied situations, the Commission has removed one step from the current process. This means that the hierarchy of appeals forums is reduced to two steps in all cases. If a local board of assessment exists the taxpayer appeals there first and then to Court.

The onus is on the local parties to settle rather than allow the court to make the decision and there is no "incentive" for a local board to do nothing, which in the past meant sending the issue to the State Board and hoping for a satisfactory resolution. This should also make decisions much more timely. For various reasons some Board decisions have been pending for more than a year. Without having to hear deemed denied cases, the Board can focus its attention on other pressing issues.

During the Commission's work schedule, discussion was held regarding the role of the County Commissioners in the appeal process. Some members thought the County should not be involved at all, either because the Commissioners themselves didn't want to hear appeals or the process should allow for direct appeal to the Court. Other members liked the role of the County Commissioners because it offered taxpayers an informal, inexpensive means of appealing their assessments. An actual poll of County Commissioners indicated that they, too, were divided over the issue. Given this mixed opinion, the Commission voted to improve this aspect of the appeals process by allowing the County Commissioners of any County to establish a County Board of Assessment Review if they so choose. This will free the Commissioners in those counties that don't want to hear appeals from having to do so. At the same time, it will allow for a much more professionally oriented appeals board in those counties that choose to adopt one by involving people knowledgeable in tax matters and having an interest in the appeals process as a public service. Hopefully, this will encourage more and better local decisions rather than sending issues to the State Board or the Courts.

In order to ensure a smooth transition to these new recommended changes, the proposed legislation enacting them is intended to be effective for any appeal made with regard to an assessment for any tax year beginning on or after the property tax year beginning April 1, 1994.

The Commission also discussed numerous secondary issues as assigned by the Taxation Committee. Some of these were adopted (LD 510, part of LD 1288), and some were dismissed outright (LD 557, LD 1234, LD 1539, PL 1993, C. 242). Two were discussed but left unresolved. With regards to LD 1241, Clarify the Definition of Taxable Personal Property, the Commission did not believe it was within the scope of their study to make this definition. However, it noted that such a clarification is extremely important and urges MMA, the Maine Association of Assessing Officers, the Bureau of Taxation and others to continue working in this area. The Legislature will have to make some sort of a decision within a few years and everyone with a stake in the outcome should be prepared to defend their position when that happens.

LD 1190 was also declared to be outside the purview of this Commission, but the members believe that the issue is too important to leave unresolved. Therefore, the Commission recommends that the Taxation Committee bring back the bill and work closely with the Maine Municipal Association to resolve it. If the Committee believes that abatements are still legitimate tools for municipalities to use, then they must say so. If, on the other hand, deferrals of taxes are better for municipalities in today's world of far-flung families and financial capabilities, then LD 1190 must be further discussed.

In conclusion, the Commission to Study the Statutory Procedures for Local Property Tax Abatement Appeals recognizes that its recommendations are neither major changes nor numerous. However, we do believe that, if adopted, these changes will improve the appeals process and allow the citizens of Maine to expect and enjoy an appeals process that is clear, efficient, equitable and timely. The proposed legislation is attached as Appendix A.

APPENDIX A

**Bill, An Act to Implement Recommendations of
the Commission to Study the Statutory
Procedures for Local Property Tax Abatement
Appeals.**

Sec. 1. 36 MRS §271, Sub-§1 is amended to read:

36 § 271. State Board of Property Tax Review

1. Organization; meetings. The State Board of Property Tax Review, as established by Title 5, section 12004-B, subsection 6, shall consist of 15 members appointed by the Governor for terms of 3 years, except for initial appointments which shall be 1/3 of the membership for one year, 1/3 of the membership for 2 years and 1/3 of the membership for 3 years. Vacancies on the board shall be filled for the remainder of the unexpired term. The membership shall be equally divided among attorneys, real estate brokers, engineers, retired assessors and public members. The board shall annually elect a chair ~~and secretary.~~ ~~The secretary need not be chosen from the members of the board.~~ The Joint Standing Committee of the Legislature having jurisdiction over taxation shall review the make-up of the board prior to June 30, 1995 to determine if the number of members should be reduced.

Sec. 2. 36 MRS §271 sub-§2-A is enacted to read:

2-A. Executive Director; Powers and Duties. An Executive Director of the State Board of Property Tax Review shall be appointed by the board to serve at their will and pleasure. The person so appointed must be experienced in the field of taxation, assessing or law and shall perform all duties designated by statute and otherwise assigned by the board. The Executive Director shall serve as secretary of the board and shall maintain a record of all proceedings before the board. No board members shall serve as Executive Director.

The salary of the Executive Director shall be established by the board within salary range 86 and may be adjusted periodically by the board within the limits for salary review procedures established in Title 2, section G, subsection 5.

Sec. 3. 36 MRS §271, sub-§3 is amended to read:

3-A. Filing. Petitions for appeal and all other papers required or permitted to be filed with the board must be filed with the secretary of the board. Filing with the secretary may be accomplished by delivery to the office of the board or by mail addressed to the secretary of the board. The board shall establish a fee schedule that sets the amount required to accompany all request for appeals. All papers to be filed that are transmitted by the United States Postal Service are deemed filed on the day the papers are deposited in the mail as provided in section 153.

Sec. 4. 36 MRS §271, sub-§5 is amended to read:

5. Hearings. Upon receipt of an appeal, the chairman of the board and the Executive Director shall determine if the appeal is correctly within the jurisdiction of the board. If the board does not have jurisdictional authority to hear the appeal, the Executive Director shall notify all parties within 10 days of making he determination. If the board does have jurisdiction over the appeal, the chair shall select from the list of board members 5 persons to hear the appeal and shall notify all parties of the time and place of the hearing. The selection of members for an appeal hearing shall be based upon availability, geographic convenience and area of expertise. Three of the 5 members shall constitute a quorum.

Sec. 5. 35 MRS §273 is amended to read:

36 § 273. Nonresidential property exceeding \$500,000 \$1,000,000

If the owner of nonresidential property with an equalized municipal valuation of ~~\$500,000~~ \$1,000,000 or greater appeals to the State Board of Property Tax Review as provided in sections 843 and 844, the state board shall hold a hearing de novo. For the purposes of this section, "nonresidential property" means any property, excluding unimproved land, that is used primarily for commercial, industrial or business purposes.

Sec. 6. 36 MRSA §843 is amended to read:

36 § 843. Appeals

1. Municipalities. If a municipality has adopted a board of assessment review and the assessors or the municipal officers refuse to make the abatement asked for, the applicant may apply in writing to the board of assessment review within 60 days after notice of the decision from which the appeal is being taken or after the application is deemed to have been denied, and, if the board thinks the applicant is over-assessed, the applicant is granted such reasonable abatement as the board thinks proper. Except with regard to nonresidential property with an equalized municipal ~~value-valuation~~ of ~~\$500,000~~ \$1,000,000 or greater, either party may appeal from the decision of the board of assessment review directly to the Superior Court, in accordance with Rule 80B of the Maine Rules of Civil Procedure. If the board of assessment review fails to give written notice of its decision within 60 days of the date the application ~~was~~ is filed, unless the applicant agrees in writing to further delay, the application is deemed denied and the applicant may appeal to Superior Court as if there had been a written denial, ~~or the applicant may appeal to the State Board of Property Tax Review.~~

1-A. Nonresidential property exceeding \$500,000 \$1,000,000. With regard to nonresidential property with an equalized municipal valuation of ~~\$500,000~~ \$1,000,000 or greater, either party may appeal the decision of the local board of assessment review to the State Board of Property Tax Review within 60 days after notice of the decision from which the appeal is taken or after the application is deemed to be denied. The board shall hold a hearing de novo. If the board thinks that the owner is over-assessed, it shall grant such reasonable abatement as the board thinks proper. For the purposes of this subsection, "nonresidential property" means any property, excluding unimproved land, that is used primarily for commercial, industrial or business purposes.

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

Except with regard to nonresidential property with an equalized municipal valuation of \$1,000,000 or greater, either party may appeal from the decision of the board of assessment review directly to the Superior Court, in accordance with Rule 80B of the Maine Rules of Civil Procedure. If the board of assessment review fails to give written notice of its decision within 60 days of the date the application was filed, unless the applicant agrees in writing to further delay, the application is deemed denied and the applicant may appeal to Superior Court as if there had been a written denial.--The decision of the State Board of Property Tax Review is deemed final agency action by that board under the Maine Administrative Procedure Act.

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

4. Payment requirements for taxpayers. A taxpayer must pay an amount of current taxes equal to the amount of taxes paid in the next preceding tax year or the amount of taxes in the current tax year not in dispute, whichever is greater, by the due date in order to enter an appeal under this section or to continue prosecution of an appeal pending under this section. If an appeal is in process upon expiration of a due date for payment of taxes in a particular municipality, without the appropriate amount of taxes having been paid, the appeal process must be suspended until the appropriate amount of taxes, together with any accrued interest and costs, has been paid. This section applies to any property tax year beginning on or after April 1, 1993.

Sec. 7. 36 MRSA §844 is amended to read:

36 § 844. Appeals to county commissioners

1. Municipalities without board of assessment review. Except when the municipality or primary assessing area has adopted a board of assessment review, ~~or has been designated as a primary assessing area,~~ if the assessors or the municipal officers refuse to make the abatement asked for, the applicant may apply to the county commissioners within 60 days after notice of the decisions from which the appeal is being taken or within 60 days after the application is deemed to have been denied. If the commissioners think that the applicant is over-assessed, the applicant is granted such reasonable abatement as the commissioners think proper. If the applicant has paid the tax, the applicant must be reimbursed out of the municipal treasury, with costs in either case. If the applicant fails, the commissioners shall allow costs to the municipality, taxed as in a civil action in the Superior Court, and issue their warrant of distress against the applicant for collection of such amount as may be due the municipality. The commissioners may require the assessors or municipal clerk to produce the valuation by which the assessment was made or a copy of it. Except with regard to nonresidential property with an equalized municipal valuation of \$1,000,000 or greater, either ~~Either~~ party may appeal from the decision of the county commissioners to the Superior Court, in accordance with the Maine Rules of Civil Procedure, Rule 80B. If the county commissioners fail to give written notice of their decision within 60 days of the date the application is filed, unless the applicant agrees in writing to further delay, the application is deemed denied and the applicant may appeal to the Superior Court as if there had been a written denial, ~~or the applicant may appeal to the State Board of Property Tax Review.~~

Sec. 8. 36 MRS §844, sub-§1-A is enacted to read:

1-A. County Board of Assessment Review. The county commissioners in any county may create a county board of assessment review to hear all appeals to the county commissioners. The board shall have all of the powers and duties of a municipal board of assessment review including the following:

1. Organization. A county board of assessment review must be organized as follows:

A. The board must consist of 5 or 7 members, serving staggered terms of at least 3 and not more than 5 years. The board shall annually elect a chairman and secretary from its membership.

B. Neither a county official nor the spouse of a county official may be a member or associate member of the board.

C. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting on that issue shall be decided by a majority vote of the members, excluding the member who is being challenged.

D. The County Commissioners may dismiss a member of the board for cause before the member's term expires.

2. Procedure. The following provisions govern the procedure of the board.

A. The chairman shall call meetings of the board as required. The chairman shall also call meetings of the board when requested to do so by a majority of the members or by the County Commissioners. A quorum of the board necessary to conduct an official board meeting must consist of at least a majority of the board's members. The chairman shall preside at all meetings of the board and be the official spokesman of the board.

B. The secretary shall maintain a permanent record of all board meetings and all correspondence of the board. The secretary is responsible for maintaining those records which are required as part of the various proceedings which may be brought before the board. All records to be maintained or prepared by the secretary are public records. They shall be filed in the County Commissioners office and may be inspected at reasonable times.

C. The board may provide, by regulation which shall be recorded by the secretary, for any matter relating to the conduct of any hearing, provided that the chair may waive any regulation upon good cause shown.

D. The board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party has the right to present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct any cross-examination that is required for a full and true disclosure of the facts.

E. The transcript or tape recording of testimony, if such a transcript or tape recording has been prepared by the board, and the exhibits, together with all papers and requests filed in the proceeding, constitute the public record. All decisions become a part of the record and must include a statement of findings and conclusions, as well as the reasons or basis for the findings and conclusions, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial of relief. Notice of any decision must be mailed or hand delivered to all parties and the County Commissioners within 10 days of the board's decision.

F. Either party may appeal from the decision of the county board of assessment review to the Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B. If the county board of assessment review fails to give written notice of its decision within 60 days of the date the application was filed, unless the applicant agrees in writing to further delay, the application is deemed denied and the applicant may appeal to Superior Court as if there had been a written denial.

Sec. 9. 36 MRS §844, sub-§2 is amended to read:

2. Nonresidential property exceeding \$500,000 \$1,000,000. Notwithstanding subsection 1, With regard to the owner of nonresidential property with an equalized municipal valuation of \$500,000 \$1,000,000 or greater, either party may choose to appeal the decision of the assessors or the municipal officials officers with regard to a request for abatement to the State Board of Property Tax Review within 60 days after notice of the decision from which the appeal is taken or after the application is deemed to be denied. If the state board thinks that the owner is over-assessed, it shall grant such reasonable abatement as the board thinks proper. For purposes of this subsection, "nonresidential property" means any property, excluding unimproved land, that is used primarily for commercial, industrial or business purposes.

Sec. 10. 36 MRS §850 is repealed.

36-§-850--Assessment-of-costs

When an applicant appeals to the State Board of Property Tax Review because the local board of assessment review or county commissioners fail to make a decision, the costs of the state board in deciding the appeal shall be charged to the municipality or county failing to make the decision.---

Sec. 11. Effective Date. This act is effective for any appeal filed that is based on assessments made for any property tax year that begins on or after April 1, 1994.