

MAINE STATE LEGISLATURE

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June 18, 1945

To Fred M. Berry, State Auditor
Subject: Overlay Assessed by Municipalities

The subject of your memorandum of June 11th relates to the assessment of an overlay by assessors in towns of the State, and your question is whether an assessment is proper, so long as the overlay is within the 5% allowed by statute.

Chapter 81, Section 49, R. S. 1944, reads as follows:

"The assessors may assess on the polls and estates such sum above the sum committed to them to assess, not exceeding 5% thereof, as a fractional division renders convenient, and certify that fact to their town treasurer."

The first statute on the subject, enacted in 1821, Chapter 113, Section 14, was as follows:

"Be it further enacted, That the Assessors for any town or plantation may and are hereby authorized and empowered to apportion on the polls and estates according to law, such additional sum over and above the precise sum to them committed to assess, as any fractional division of such precise sum may render convenient in the apportionment thereof, not exceeding five per centum on the sum so committed; and it shall be the duty of such assessors to certify such town or plantation Treasurer thereof."

This was taken from the statutes of the Commonwealth of Massachusetts, the language of which was practically the same; and the statute in the present Revision and in earlier revisions is a condensation of this original section on the subject, the meaning of which would be the same, the intent being merely to condense it.

In Alvord v. Cullen, 20 Pick. (Mass.) 418 (1838) at page 423, the Massachusetts Court said of its act:

"The practice of overlaying prevailed and was general, long before the above statute was enacted. It is not only convenient but indispensable, to avoid impracticable fractional divisions, and to guard against deficiencies."
(Emphasis of the last clause ours.)

This case is also authority for the proposition that if the overlay is within 5%, the assessment is good. See also Lord v. Parker, 83 Maine, 531. It would thus seem that the only limitation is that the 5% shall not be exceeded.

I am therefore of the opinion that a tax assessed would be valid, if the overlay was not in excess of 5% of the sum committed to the assessors for assessment.

cc. State Tax Assessor

Abraham Breitbard,
Deputy Attorney General