

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

December 1, 1967

Ernest H. Johnson, State Tax Assessor Bureau of Taxation

James M. Cohen, Assistant Attorney General " "

Subject: Enforcement of Supplementary Assessed Real Estate Taxes -
Unorganized Territory

FACTS:

Lands in unincorporated and unorganized territory are taxed pursuant to 36 M.R.S.A. §§1141-1332*, of which the following is the basic authority:

Lands not exempt, and not liable to be assessed in any town, may be taxed by the Legislature for a just proportion of all state, county and forestry district taxes for ordering the state, county and forestry district taxes upon property liable to be assessed in towns... (36 M.R.S.A. §1141)

The lands are assessed by the State Tax Assessor in accordance with §1142 upon a valuation determined by the Board of Equalization:

When the lands mentioned in section 1141 are assessed for any state, county and forestry district taxes, the State Tax Assessor shall determine the proportionate amount of such taxes due from the owners of such lands by applying the total millage rate of all such taxes against the valuation as listed by the Board of Equalization...

Authorization is given for a supplemental assessment in §1331, reading as follows:

....The State Tax Assessor shall make a supplementary assessment of any state, county or forestry tax on lands in unorganized territory omitted by error from the last previous state valuation, and of buildings located in unorganized territory built since the last previous state valuation. Such supplementary assessment shall be based on the valuation to be established by the Board of Equalization.

General authorization is given to the State Tax Assessor to make supplementary assessments of any tax for which he has the authority to make an original assessment.

....The State Tax Assessor may, within two years from the assessment, if justice requires, make a

Ernest H. Johnson

December 1, 1967

Subject: Enforcement of Supplementary Assessed
Real Estate Taxes - Unorganized Territory

supplementary assessment of any tax of which the original assessment is required by law to be made by the State Tax Assessor. Such supplementary assessment shall be made in the same manner as the original assessment and the taxes so assessed shall be committed and collected accordingly. (36 M.R.S.A. §101)

An original assessment is made by the State Tax Assessor with notice to the landowner on or before July 1. Payment is due by October 1 and the taxes become delinquent on February 1. (36 M.R.S.A. §1281) Enforcement of the tax by forfeiture is set forth in 36 M.R.S.A. §§1281-1283. They provide for additional notice, publication, etc. by February 20, with a demand for payment by March 1. By March 15 a mortgage-lien is recorded.

In addition to the mortgage-lien procedure of §1281, an automatic lien is created by §552 upon the assessment of real estate taxes. To enforce this lien created upon the assessment of §1141 property, a civil action may be brought. (§1284)

A different method of collecting the tax is to demand payment and sue after 90 days. Such action waives the mortgage-lien procedure of §1281.

A factual summary indicates authority of the State Tax Assessor to assess taxes against owners of "lands not exempt, and not liable to be assessed in any town". Additional authority is given to make supplementary assessments of taxes on lands omitted by error from the last previous state valuation based upon a valuation to be established by the Board of Equalization.

Ernest H. Johnson December 1, 1967
Subject: Enforcement of Supplementary Assessed
Real Estate Taxes - Unorganized Territory

The authority given to the State Tax Assessor to make a supplementary assessment in §1331 carries with it no enforcement procedure.

However, §101 which is a general authority for supplementary assessments provides for assessment and collection in the same manner as the original assessment.

(*Effective November 30, 1968 as enacted by P.L. 1967, Ch. 271, "lands" is replaced by "real estate" throughout the unorganized territory provisions).

QUESTION:

Do the enforcement procedures for original assessments of state, county and forestry district taxes apply to the enforcement of supplementary assessments?

ANSWER:

Yes

OPINION:

The question arises because the power given to the State Tax Assessor in Chapter 107 (Unincorporated and Unorganized Places) to make supplementary assessments, does not specifically carry with it enforcement powers. The three methods of enforcement within the Chapter each make differing statements as to their applicability.

Section 1281 sets forth procedures to enforce taxes on lands

Ernest H. Johnson

December 1, 1967

Subject: Enforcement of Supplementary Assessed
Real Estate Taxes - Unorganized Territory

mentioned in §1141. Section 1284 sets forth procedures to enforce taxes assessed under §1741 and 1144. Section 1285 sets forth procedures to enforce collection of state, county and forestry taxes provided by law.

In addition to the enforcement procedures set forth in §§1281-1285 which would appear to apply to the original assessments of lands in unorganized territories, there exists in §101 what appears to be general authorization to the State Tax Assessor to make a supplementary assessment. This authority carries with it enforcement power.

The meaning of the variety of sections mentioned and the intention of the legislature in adopting them is "gatherable by taking all of the sections as a whole and construing them together." Constock's case, 129 Me. 467, 471. Amity v. Orient, 133 Me. 29. The authority for making a supplementary assessment must be interpreted with regard to the total law of taxation. "It is fundamental...that a particular...section should not be considered apart from its context." Steele v. Smalley, 141 Me. 355, 358.

As the court additionally stated in Steele, supra. (at 361) "We are concerned here not with form but with substance; and it is the duty of this court to interpret the language of this act so as to carry out the obvious purpose which the legislature had in mind."

Ernest H. Johnson
Subject: Enforcement of Supplementary Assessed
Real Estate Taxes - Unorganized Territory

December 1, 1967

Certainly the assumption must be valid that the legislature did not intend to create the power to tax without the power to enforce the assessment. A brief examination of the development of the statute will help in the determination of the question.

Originally, prior to 1943, the State Tax Assessor had no power to make supplementary assessments against lands in unorganized territory. What now appears in Title 36 as two separate sections -- 101 and 1331 -- had developed within the same section, which was §74 of Chl 16 R. S. 1934.

The final authority given to the State Tax Assessor to make supplementary assessments was in 1943 by the addition of what is now part of §101:

The State Tax Assessor may, within 2 years from the assessment, if justice requires, make a supplementary assessment of any tax of which the original assessment is required by law to be made by the State Tax Assessor. Such supplementary assessment shall be made in the same manner as the original assessment and the taxes so assessed shall be committed and collected accordingly.

At the next regular session of the Legislature authority was given for the assessment of lands forfeited to the State and omitted from the last State valuation, permitting the Board of Equalization to establish a valuation for such property.

In 1951, the paragraph under discussion was adopted giving the State Tax Assessor authority to assess supplementally such lands in unorganized territory omitted from the last State valuation as well as buildings built since the last valuation and gave the Board of Equalization power to establish a valuation.

Ernest H. Johnson
Subject: Enforcement of Supplementary Assessed
Real Estate Taxes - Unorganized Territory

December 1, 1967

One of the key questions for determination is whether the 1943 addition applies to supplemental assessments for unorganized territory.

The State Tax Assessor is required by §1142 to make an assessment against each landowner using the State valuation as the basis for the assessment. Although the tax is levied by the legislature, the original assessment of the tax against a landowner is made by the State Tax Assessor.

Since the tax determination requires use of the State valuation, in order to tax lands omitted from the last State valuation, a supplementary valuation would have to be authorized.

Therefore, although the authority of the State Tax Assessor to make a supplemental assessment has existed since 1943, it was not until 1951 that authorization was established to create a tax base. The 1951 amendment actually supplemented authority previously existing.

Sections 101 and 1331 read together, as they must be, provide that a supplementary assessment shall be made in the same manner as the original assessment, which is provided for by §1142, and committed and collected as provided in §§1281-1285.

Notwithstanding the authority of §101, enforcement power exists pursuant to §1281 and 1285. The procedure set out in §1281 applies to state, county and forestry district taxes on lands mentioned in section 1141. It is the lands -- lands not exempt and not liable

Ernest H. Johnson

December 1, 1967

Subject: Enforcement of Supplementary Assessed
Real Estate Taxes - Unorganized Territory

to be assessed in any town -- not taxes assessed pursuant to 1141 that is the basis for the application of the mortgage-lien procedures. The procedures thus set forth are applicable to a supplementary assessment since the "lands in unorganized territory" are the same as those mentioned in 1141.

The collection procedures of 1285 are also available notwithstanding 101 since 1285 applies to state, county and forestry district taxes provided by law, which would include the assessment under 1331.

The only method of collection not available, assuming the nonexistence or non-applicability of 101, is the procedure of 1284. This section applies to taxes assessed under 1141 and would not reach the assessment under 1331.

The State Tax Assessor should assume the availability of all methods of collection and enforcement for supplementally assessed taxes. The assessment of such taxes should be made in a manner similar to the assessment of the original tax. The time tables for assessment, collection and enforcement apply equally to the supplemental assessment as well as the original.

JMC:lpn