

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

March 10, 1982

Raymond L. Halperin
State Tax Assessor
Bureau of Taxation
State House #24
Augusta, Maine 04333

Dear Mr. Halperin:

This will respond to your question as to whether sections 609 and 610 of Title 36 are violative of the Maine Constitution. Section 609 provides that the valuation for property tax purposes of "sailing vessels and barges registered or enrolled under the laws of the United States or foreign governments" shall be \$20 per ton, gross tonnage, for new vessels and barges. Valuation is reduced at the rate of \$1 a ton for every year of age until the vessel is 17 years old or more, at which time the valuation is \$3 per ton, gross tonnage. Section 610 provides that if expenditures are made to rebuild a vessel or barge that are at least 40% of the cost of building that vessel or barge entirely new, then the vessel is taxed as if it were 1/2 of its actual age. If the vessel or barge is rebuilt to the extent of 25% of the cost of building new, then the vessel is taxed as if it were 5/8 of its actual age.

Since you have posed this question, chapter 357 of the Public Laws of 1981 has become effective. Chapter 357, which enacts 36 M.R.S.A. § 610-A, provides:

All watercraft taxed as personal property under this subchapter shall be assessed at just value. As used in this section

"watercraft" means any type of vessel, boat or craft capable of being used as a means of transportation on water, other than a sea-plane, and includes the motor attached to it and used to propel it.

By February 1, 1982, the State Tax Assessor shall by regulation prescribe a formula which may be used by municipalities as a guideline to determine the just value of watercraft which exceed 12 feet in length but which do not exceed 65 feet in length. The formula shall take into consideration such factors as dimensions, construction materials, propulsion and depreciation factors.

For watercraft 12 feet or less in length or more than 65 feet in length and for all other watercraft for which the formula prescribed by the State Tax Assessor does not result in just value, the municipality shall use whatever other means of assessment that most accurately determines just value.

The State Tax Assessor shall annually, as part of its municipal valuation data collection effort, require municipalities to list the method used to calculate the just value of watercraft.

Section 610-A applies to all "watercraft" which by definition includes sailing vessels and barges. Section 610-A is merely a restatement of the constitutional requirement that property taxes "shall be apportioned and assessed equally, according to the just value thereof." Me. Const., art. IX, § 8 (amended 1978). Additionally, the State Tax Assessor is required to prescribe formulas which shall aid municipal assessors in assessing watercraft within the constitutional standard. We are of the opinion that section 610-A impliedly repeals sections 609 and 610.

It is clear that sections 609 and 610 do not provide for the assessment of sailing vessels and barges at just value. A valuation based strictly upon a dollar amount for every ton that a vessel weighs is not calculated to determine just value. Mere weight cannot be determinative of value. Two vessels of the same weight will be given the same value even though one may have a much higher fair market value than the other. Consequently, owners of sailing vessels and barges do not bear

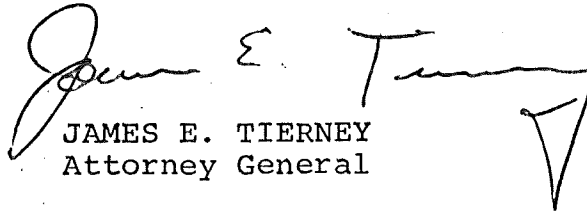
the burden of tax in proportion to the value of their property, unlike owners of real and other personal property.

As sections 609 and 610 require a valuation at other than just value, they are both unconstitutional and in direct conflict with newly enacted section 610-A. When two statutes are in direct conflict with each other, the more recent one is said to impliedly repeal the older one. See Opinion of the Justices, Me., 311 A.2d 103 (1973).

To conclude, it is our opinion that all watercraft, including sailing vessels and barges, should be assessed at just value, in compliance with the Constitution, section 610-A and the regulations promulgated under section 610-A by the State Tax Assessor. Accordingly, sections 609 and 610 should no longer be used to value sailing vessels and barges.

Please feel free to contact this office if we may be of further assistance.

Sincerely,


JAMES E. TIERNEY
Attorney General

JET/ec

cc: Honorable Thomas M. Teague
Honorable Bonnie Post