

SENATE

ANNE M. HASKELL, District 9, Chair
REBECCA J. MILLETT, District 7
DOUGLAS A. THOMAS, District 27

ELIZABETH COOPER, Legislative Analyst
GREG CONNORS, Fiscal Analyst
HEATHER MACKLIN, Committee Clerk



HOUSE

ADAM A. GOODE, Bangor, Chair
STEPHEN S. STANLEY, Medway
NATHAN L. LIBBY, Lewiston
MATTHEW W. MOONEN, Portland
RYAN D. TIPPING-SPITZ, Orono
L. GARY KNIGHT, Livermore Falls
PAUL E. BENNETT, Kennebunk
DONALD G. MAREAN, Hollis
ROGER A. JACKSON, Oxford
JOSEPH E. BROOKS, Winterport

State of Maine
ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE
COMMITTEE ON TAXATION

June 3, 2013

TO: Senator Dawn Hill, Senate Chair
Representative Margaret R. Rotundo, House Chair
Members, Joint Standing Committee on Appropriations and Financial Affairs

FR: Senator Anne M. Haskell, Senate Chair
Representative Adam A. Goode, House Chair
Joint Standing Committee on Taxation

RE: Recommendations for Part O of LD 1509 (Sudden and severe valuation adjustment)

Please find attached an amendment to replace Part O in the biennial budget. It addresses the obsolescence issue identified in our May 17th letter and makes other changes as summarized below.

Current law provides for a reduction in the state valuation used for revenue sharing and education funding purposes when a municipality experiences a significant loss in property valuation attributable to a single taxpayer. Part O, as included in LD 1509, does the following:

- limits the circumstances that qualify as a sudden and severe disruption;
- changes the adjustment request process and adds reporting requirements;
- requires an appraisal of the property by a professional appraiser; and,
- requires municipalities that request "enhanced BETE" payments to provide a professional appraisal when the BETE property represents more than 2% of the tax base.

During our initial review of Part O in LD 1509, we identified several areas of concern and many were addressed in the change package. The change package:

- clarifies that relief is available in circumstances of functional or economic obsolescence;
- adds as a qualifying event the transition from BETR to BETE as proposed in Part K of LD 1509;
- specifies information that needs to be in the appraisal report;

- allows certified Maine assessors with 5 years of experience to perform the appraisal; and
- provides that a denial of a claim for adjustment is final agency action subject to review in Superior Court.

Our amendment includes the provisions above and modifies some of them. Also, the attached language:

- clarifies that relief is available in circumstances where the cause of the loss in valuation was not 'reasonably determinable' until the prior fiscal year;
- requires the State Tax Assessor to provide a written determination approving or denying the claim that includes findings of fact;
- requires income and expense information from a taxpayer owning property exceeding 2% of total valuations in order to qualify for a BETE exemption and makes the information provided confidential; and
- requires, in order for a municipality to received enhance BETE reimbursement, a municipal assessor to certify that the taxpayer provided sufficient information for proper valuation and that the information was used for valuation and exemption purposes.

If the Joint Standing Committee on Appropriations and Financial Affairs plans to include this language in the budget, members may want to the Judiciary Committee to review the confidentiality provision in Section O-8 to ensure that this is a proper public records exception. Also, the Taxation Committee has not reviewed your recommendations for Part K and some of the language in Section O-3 may not be appropriate if the Park K proposal in LD 1509 is modified or rejected.

We appreciate the opportunity to provide this additional information.

cc: Members, Joint Standing Committee on Taxation
Maureen Dawson, AFA Committee Analyst

Amend LD 1509 by striking all of Part O and replacing it with the following:

Sec. O-1. 5 MRSA §1532, sub-§7 as enacted by PL 2007, c. 322, §1, is repealed.

Sec. O-2. 36 MRSA §208-A, sub-§1 as repealed and replaced by PL 2007, c. 322, §2, is amended to read:

1. Request for adjustment. A municipality that has experienced a sudden and severe disruption in its municipal valuation may request an adjustment to the equalized valuation determined by the State Tax Assessor under section 208 for the purposes of calculating distributions of education funding under Title 20-A, chapter 606-B and state-municipal revenue sharing under Title 30-A, section 5681. A municipality requesting an adjustment under this section must file a petition, with supporting documentation, with the State Tax Assessor by March 31st of the year following the tax year in which the sudden and severe disruption occurred and indicate the time period for which adjustments to distributions are requested under subsection 5.

Sec. O-3. 36 MRSA §208-A, sub-§2 as repealed and replaced by PL 2007, c. 322, §2, is amended to read:

2. Sudden and severe disruption. A municipality experiences a sudden and severe disruption in its municipal valuation if:

A. The municipality experiences ~~an equalized~~ a net reduction in equalized municipal valuation of at least 2% from the equalized municipal valuation that would apply without adjustment under this section;

B. The ~~equalized~~ net reduction in equalized municipal valuation is attributable to:

(1) ~~the closure~~ cessation of business operations, removal, replacement, retrofit, obsolescence functional or economic obsolescence not due to short-term market volatility, or destruction of or damage to property resulting from disaster, ~~disaster or abatement~~ attributable to a single taxpayer that occurred in or was not reasonably determinable until the prior tax year; and-or

(2) the loss of valuation as of April 1, 2014 attributable to the qualification of business equipment for exemption under Chapter 105, subchapter 4-C, which had qualified for reimbursement under Chapter 915 for April 1, 2013.

C. The municipality's equalized tax rate of residential property exceeds the state average.

For purposes of this subsection, "removal" does not include property that was present in the municipality for less than 24 months. This subsection does not apply to property acquired by a municipality that otherwise could seek relief pursuant to this section.

Sec. O-4. 36 MRSA §208-A, sub-§3 as repealed and replaced by PL 2007, c. 322, §2, is repealed and the following enacted in its place:

3. Procedure. A municipality may request an adjustment under this section by filing a petition with the State Tax Assessor in accordance with this subsection.

A. On forms prescribed by the State Tax Assessor, the municipality shall identify a net reduction in equalized municipal valuation of at least 2% of the municipality's equalized value, the property of a single taxpayer, the date of the loss, and the cause of the loss. The municipality must include an appraisal report prepared by a qualified professional appraiser with respect to the property responsible for the loss that shows the value of the property immediately prior to the loss and the value of the property following the loss. The appraisal report must include a summary of the appraiser's consideration of the cost, income capitalization and sales comparison approaches to the value of the property. The municipality is required to provide any other documentation to support its claim as determined by the State Tax Assessor, including, if requested, all records associated with the municipality's assessment of the property subject to the requested adjustment for the three year period prior to the date of the reduction in valuation.

For purposes of this section, a qualified professional appraiser is an individual who is a certified general real property appraiser licensed under 32 MRSA chapter 124, or a Certified Maine Assessor certified under 36 MRSA section 310; has at least five years' experience determining the just value of real and personal property of the commercial and industrial type using the three standard methods of valuation; and attests in writing to the State Tax Assessor that the individual has a current working knowledge of the application of the three standard methods of valuation to real and personal property of the commercial and industrial type.

B. The State Tax Assessor shall examine the documentation provided by the municipality and determine whether the municipality qualifies for an adjustment under this section.

C. If the State Tax Assessor determines that a municipality qualifies for an adjustment under this section, the State Tax Assessor shall calculate the amount of the adjustment for the municipality by determining the amount by which the state valuation determined under section 208 would be reduced as a result of the net sudden and severe disruption of equalized municipal valuation for the state valuations to be used in the next fiscal year by the Commissioner of Education and the Treasurer of State. The State Tax Assessor shall adjust subsequent state valuations until such time as the state valuation recognizes the loss. The State Tax Assessor may limit the time period or amount of adjustment to reflect the circumstances of the sudden and severe loss of valuation.

Sec. O-5. 36 MRSA §208-A, sub-§4 as repealed and replaced by PL 2007, c. 322, §2, is repealed and the following enacted in its place:

4. Notifications.

A. After review of the claim, the State Tax Assessor shall approve or deny, in whole or in part, the adjustment requested. The written decision must include the findings of fact upon which the decision is based. Notwithstanding section 151, the State Tax Assessor's written determination constitutes final agency action that is subject to review by the Superior Court in accordance with the Maine Administrative Procedures Act, except that Title 5, section 11006 does not apply.

B. Within 30 days of providing the municipality the written determination denying, in whole or in part a, a claim for adjustment, the State Tax Assessor shall provide a copy of the denial letter to the clerk of the joint standing committee of the Legislature having jurisdiction over taxation matters.

C. The State Tax Assessor shall notify the Commissioner of Education and the Treasurer of State of any adjustment to state valuation determined under this section and the time period to which the adjustment applies.

Sec. O-6. 36 MRSA §208-A, sub-§5 as repealed and replaced by PL 2007, c. 322, §2, is amended to read:

5. Effect of modified state valuation. The determination of an adjustment to state valuation has the following effect.

A. The Commissioner of Education shall use the adjusted state valuation amount instead of the valuation certified under section 305 in calculate the amount by which the local share of education funding under Title 20-A, chapter 606-B would have been increased if the adjusted state valuation amount had been used for the applicable time period in calculating for the following fiscal year education funding obligations. The commissioner shall certify to the State Controller the amount required to make the necessary payments and pay that amount to the municipality.

B. The Treasurer of State shall use the adjusted state valuation amount instead of the valuation certified under section 305 in calculating future for the following fiscal year distributions of state-municipal revenue sharing.

Sec. O-7. 36 MRSA §693, sub-§1, as repealed and replaced by P.L. 2007, c.695, Part A, section 43, is amended to read:

§693. Forms; reporting

1. Reporting. On or before May 1st of each year, a taxpayer claiming an exemption under this section shall file a report with the assessor of the taxing jurisdiction in which the property would otherwise be subject to taxation on April 1st of that year. The report must identify the property for which exemption is claimed that would otherwise be subject to taxation on April 1st of that year and must be made on a form prescribed by the State Tax Assessor or substitute form approved by the State Tax Assessor. When the valuation of all property assessed to the taxpayer exceeds 2% of the total taxable valuation of the municipality for the prior tax year, the report must

also include sufficient information, including income and expense information as necessary, to allow the assessor to determine the just value of the property owned by the taxpayer that is claiming the exemption as well as the property exempted under this subchapter. The State Tax Assessor shall furnish copies of the form to each municipality in the State and the form must be made available to taxpayers prior to April 1st annually. The assessor of the taxing jurisdiction may require the taxpayer to sign the form and make oath to its truth. If the report is not filed by April 1st, the filing deadline is automatically extended to May 1st without the need for the taxpayer to request or the assessor to grant that extension. Upon written request, the assessor may at any time grant further extensions of time to file the report. If a taxpayer fails to file the report in a timely manner, including any extensions of time, the taxpayer may not obtain an exemption for that property under this subchapter for that tax year. The assessor of the taxing jurisdiction may require in writing that a taxpayer answer in writing all reasonable inquiries as to the property for which exemption is requested. A taxpayer has 30 days from receipt of such an inquiry to respond. Upon written request, a taxpayer is entitled to a 30-day extension to respond to the inquiry and the assessor may at any time grant additional extensions upon written request. The answer to any such inquiry is not binding on the assessor.

All notices and requests provided pursuant to this subsection must be made by personal delivery or certified mail and must conspicuously state the consequences of the taxpayer's failure to respond to the notice or request in a timely manner.

If an exemption has already been accepted and the State Tax Assessor subsequently determines that the property is not entitled to exemption, a supplemental assessment must be made within 3 years of the original assessment date with respect to the property in compliance with section 713, without regard to the limitations contained in that section regarding the justification necessary for a supplemental assessment.

If the taxpayer fails to provide sufficient information as may be required under this subsection, the taxpayer may not obtain an exemption under this subchapter for that tax year.

Sec. O-8. 36 MRS §693, sub-§1-A is enacted to read:

1-A. Information confidential. Income and expense information submitted by the taxpayer is confidential and not a public record pursuant to Title 1, section 402. Municipal assessors may not allow for the inspection of or otherwise release this information to anyone other than the State Tax Assessor.

Sec. O-9. 36 MRS §694, sub-§1, as amended by P.L. 2005, c.623, section 1, is further amended to read:

1. Examination and identification. The assessor shall examine each report pursuant to section 693 that is timely filed, determine whether the property identified in the report is entitled to an exemption under this subchapter and determine the just value of the property. Additionally, the assessor must certify to the State Tax Assessor that the taxpayer has provided sufficient information necessary for the proper valuation of the property and that the assessor has considered that information in the valuation and exemption determinations. Failure to provide this certification to the State Tax Assessor disqualifies the municipality from reimbursement pursuant to §694(2) (B) and (C).

Sec. O-10. 36 MRSA §694, sub-§2, ¶ B, as amended by P.L. 2007, c.627, section 25, is further amended to read:

B. In the case of a municipality that chooses reimbursement under this paragraph in which the personal property factor exceeds 5%, the applicable percentage for exempt business equipment is 50% plus an amount equal to 1/2 of the personal property factor. For purposes of this paragraph, "personal property factor" means the percentage derived from a fraction, the numerator of which is the value of business personal property in the municipality, whether taxable or exempt, and the denominator of which is the value of all taxable property in the municipality plus the value of exempt business equipment. For purposes of this paragraph, the taxable value of exempt business equipment is the value that would have been assessed on that equipment if it were taxable. In order to obtain the reimbursement under this paragraph on or after April 1, 2014, the municipality must provide to the State Tax Assessor a report providing an appraisal of the exempt business equipment of all taxpayers whose equalized municipal valuation makes up at least 2% of the overall equalized valuation of the municipality. The appraisal report must include a summary of the appraiser's consideration of the cost, income capitalization and sales comparison approaches to the valuation of property. The appraisal must determine a value for the property within the five years prior to the date of the claim and must be prepared by a qualified professional appraiser within the meaning of 36 MRSA section 208-A. This appraisal must be the basis on which the property is assessed for municipal property tax purposes.

Sec. O-11. Retroactive application. This Part applies retroactively to property tax years beginning on or after April 1, 2013.

SUMMARY

This amendment replaces Part O and does the following:

Section O-1 deletes the provision for funding from the Maine Budget Stabilization Fund certain payments for adjustments to state valuation for sudden and severe disruption of municipal valuation.

Section O-2 specifies the date by which a claim for adjustment must be filed.

Section O-3 amends the definition of what constitutes a sudden and severe disruption. It clarifies and specifies the procedure for a municipality's filing of a claim and the review and determination of that claim by the State Tax Assessor. This amendment provides that "obsolescence" remains as a qualifying cause of sudden and severe disruption in municipal valuation if it is "functional or economic obsolescence not due to short term market volatility." It clarifies that relief is available where the cause of the loss was not "reasonably determinable" until the prior tax year. It also includes as an additional qualifying cause of sudden and severe disruption in municipal valuation the loss of value between April 1, 2013 and April 1, 2014 that is attributable to the exemption of business equipment under BETE that as of April 1, 2013 had been taxable property that qualified for reimbursement under Chapter 915.

Section O-4 provides the procedure for filing a petition for relief under section 208-A. It clarifies what information must be included in the appraisal report, and specifies that the report must be prepared by a qualified professional appraiser meeting the specified requirements. It also expressly allows the State Tax Assessor to ask for and obtain the previous three years' worth of assessing records with respect to the property subject to the sudden and severe adjustment request to further verify the adequacy of the application.

Section O-5 requires the State Tax Assessor to issue a written decision approving or denying a municipality's requested relief including the findings of fact that are the basis of the decision. It provides that a denial of a claim for adjustment is the final agency action subject to review in Superior Court. It requires the State Tax Assessor to provide a copy of the denial letter to the Taxation Committee.

Section O-6 requires the Commissioner of Education and the Treasurer of State to apply adjustments for sudden and severe disruption to the following fiscal year for purposes of calculating educational funding obligations and municipal revenue sharing. *(This is the same as originally proposed in Part O submitted in the Governor's biennial budget.)*

Section O-7 requires that a taxpayer seeking a Business Equipment Tax Exemption (BETE) and owning property exceeding 2% of the total valuation of the municipality must annually provide to the municipality income and expense information that is sufficient for the assessor to determine the value of all property owned by the taxpayer located in the municipality as well as the property for which exemption is sought. The taxpayer's property is ineligible for BETE if the taxpayer fails to provide sufficient information.

Section O-8 makes the income and expense information submitted by the taxpayer to the municipal assessor confidential. It prohibits the municipal assessor from releasing the information to anyone other than the State Tax Assessor.

Section O-9 requires the municipal assessor to certify to the State Tax Assessor that the assessor has received the taxpayer's income and expense information and has considered that information in the valuation and exemption determination. If the assessor does not provide this certification, the municipality will not receive the so-called "enhanced BETE" reimbursement rate for that year.

Section O-10 requires all municipalities that receives the so-called "enhanced BETE" reimbursement rate because of their disproportionate reliance on personal property in their tax base to provide a "professional appraisal report" that provides an appraisal of the exempt business equipment of all taxpayers whose equalized municipal valuation makes up at least 2% of the overall equalized valuation of the municipality. It clarifies what information must be included in the appraisal report, and specifies that the report must be prepared by a qualified professional appraiser meeting the specified requirements. This amendment implements the new requirements on and after April 1, 2014 in order to allow the affected municipalities to engage the necessary professional and otherwise prepare their assessment to meet the mandates.

Section O-11 provides for retroactive application.