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Testimony of the Maine Municipal Association
In Opposition to LD 1610
An Act To Allow a Municipality To Abate Taxes Assessed on Property That Is Destroyed

January 22, 2014

Senator Haskell, Representative Goode, members of the Taxation Committee, my name is Geoff Herman and I am testifying in opposition to LD 1610 on behalf of the Maine Municipal Association. The Association's 70-member Legislative Policy Committee voted unanimously to oppose LD 1610 at its meeting on January 16.

The entire property tax system depends on using a universal date of assessment methodology. In Maine and in every other property tax jurisdiction in the country there is established a specific day of the year when the status of the property is fixed for the purpose of taxation. That day in Maine was originally established as March 1 but was long ago changed to April 1 to better accommodate the assessors' task.

Lack of balance. LD 1610 would bypass the universal date of assessment by providing a homeowner with an abatement when residential property is reduced in value by 50% or more anytime after April 1. The municipal opposition to LD 1610 is based on its unbalanced approach to the issue. If homeowners are entitled to an abatement for property that is destroyed after April 1, why is the municipality not entitled to tax revenue to help with everyone else's taxes when property is created after April 1?

LD 1610 doesn't suggest there should be a specific window of time after April 1 within which the destruction of property should entitle abatement, but the most extreme examples to describe the phenomenon that LD 1610 attempts to address are the March 31st and April 2nd examples. If your house is built on March 31st, the value of the property will be taxed for that year and if you live in a calendar year community, that would be to your disadvantage because you are paying taxes for three months of the budget year when you had no house. If you build your house on April 2, it will not be taxed for a year and you would be advantaged. Similarly, if your property is destroyed by fire on March 31st, there will be no tax obligation for that tax year, creating a tax advantage. If the property is destroyed on April 2nd, the tax obligation will remain, creating a tax disadvantage.

LD 1610 works one side of the issue by giving the taxpayer a tax break when disadvantaged by the fixed-date-of-assessment method. The bill does nothing for the other taxpayers in the community who are disadvantaged by what is effectively a tax free year enjoyed by the person constructing the house on April 2nd. If the fixed certainty of the universal date of assessment is going to be adjusted for one circumstance and always to the advantage of just one,

why should it not be adjusted in other circumstances that would yield an advantage for the many?

Limitations and the erosion of limitations. LD 1610 attempts to install standards to ensure that this opportunity for abatement will be limited and only narrowly available. The destroyed property must be residential rather than commercial, industrial or ancillary to the residential property. The property must have sustained a 50% or greater loss in value. It is clear to municipal officials that these standards would quickly be expanded if LD 1610 is enacted because history has demonstrated over and again that any single tax forgiveness leads to additional tax forgiveness as an inevitable political consequence. If the abatement is appropriate for a primary residence, why not a commercial establishment? If the abatement is available for 50% destruction, why not 40% destruction? Nothing could stop the policy from expanding to other circumstances because to create a right to abatement in one circumstance lays the groundwork for the same right to be provided in another.

Despite appearances, likely non-discretionary. Finally, LD 1610 appears to be written, by its title and otherwise, to provide the municipal assessors with the option of providing this abatement at their total discretion. Tax law, however, does not tend to work that way. The use of the word "may" in property tax statute generally does not connote discretion. For example, the poverty abatement statute that would be amended by LD 1610 uses the term "may" in subsection 1....

1. *The assessors, either upon written application filed within 185 days from commitment stating the grounds for an abatement or on their own initiative within one year from commitment, <u>may</u> make such reasonable abatement as they consider proper to correct any illegality, error or irregularity in assessment, provided that the taxpayer has complied with section 706.*

.... but that "may" is not discretionary.

It also uses the term "may" in subsection 2...

2. *The municipal officers, or the State Tax Assessor for the unorganized territory, within 3 years from commitment, <u>may</u>, on their own knowledge or on written application, make such abatements as they believe reasonable on the real and personal taxes on the primary residence of any person who, by reason of hardship or poverty, is in their judgment unable to contribute to the public charges.*

....but that "may" is not discretionary, either.

There is no reason to believe that the "may" in this proposed subsection 2-A would be discretionary. Case law has long established that when the word "may" is used to determine the value of tax benefit provided in statute, its legal meaning is "shall". There is a constitutional requirement that property taxes be administered equally and in the same way both within a single tax jurisdiction and across property tax jurisdictions, and discretion does not fit will within that constitutional scheme.

Abatement vs. exemption. Finally, and related to the previous point, a trend seems to be developing to transform what are really property tax exemptions into "abatements". Last week, the Committee held a public hearing on LD 1646, which would effectively exempt from property taxation any increased value of a Maine resident's home if the resident was over the age of 65 and met some retirement and income standards. That property tax exemption, however, was to be provided as an abatement issued by the municipal officers. Under Maine's Constitution, there is a financial requirement for the state to participate when creating any new property tax exemption, but the state has no financial obligation when it comes to "abatements". The municipal view is that if the universal date of assessment is to be ignored as a matter of law in the circumstance of property destruction that occurs sometime after April 1, the Constitution's "equal apportionment and assessment" clause requires the policy to be uniformly applied across all property tax jurisdictions as a new exemption, and the state's financial obligation to participate at the minimal rate of 50% fully applies.