

CURRENT USE TAXATION

(more specifically)

What's new?

**Maine Revenue Services
Property Tax Division**

July 31, 2012

Property Taxation General

- Maine Revenue Services
- The State Tax Assessor shall have and exercise general supervision over the administration of the assessment and taxation laws of the State, and over local assessors and all other assessing officers in the performance of their duties, to the end that all property shall be assessed at the just value thereof in compliance with the laws of the State. (36 MRSA § 201)
- Property tax assessors in Maine occupy a unique place in the governmental structure, fulfilling a dual role of municipal official and agent of the State (Young v. Johnson*). Municipalities cannot exert any legal control over the actions of municipal assessors, since they instead are subject to the supervision and control of the State Tax Assessor in the discharge of their official duties (36 MRSA § 201).

The Constitutional Basis for Property Tax

Article IX, Section 8:

“All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof.”

Referred to as the “just value clause”, this Section is the legal foundation for the administration of property taxes in Maine.

The Constitutional Basis for Property Tax

- The concept of “just value” is the key to the primary goal of property taxation: equity.
- Equity is achieved when all taxable property is properly assessed, and no property owner is obligated to pay more or allowed to pay less than a fair share of the property tax burden.
- Because property appraisal is an “inexact science”, the achievement of complete equity remains an elusive challenge.

The Constitutional Basis for Property Tax:

Exceptions to the Just Value Clause

CURRENT USE

1970 – Maine voters approved a change to the Constitution regarding the value of property based on its current use.

Maine Constitutional Exceptions

2. The Legislature shall have power to provide for the assessment of the following types of real estate whenever situated in accordance with a valuation based upon the current use thereof and in accordance with such conditions as the Legislature may enact:

A. Farms and agricultural lands, timberlands and woodlands;

B. Open space lands which are used for land preservation, recreation or the enjoyment of scenic natural beauty; and

C. Lands used for game management or wildlife sanctuaries.

In 2005 voters also approved the following change:

D. Waterfront land that is used for or that supports commercial fishing activities

Current Use Law enactment

1971 – Farm and Open Space Tax Law enacted .

1972 – Tree Growth Tax Law enacted

2006 – Working Waterfront Tax Law enacted.

FARM & OPEN SPACE TAX LAW § 1101

- It is in the public interest to encourage the preservation of farmland and open space.
- To encourage and maintain a readily available source of food and farm products and
- To conserve the State's natural resources and to prevent the loss of farmland and open space to development.



Farm and Open Space Tax Law

Or as we prefer to refer to them:

The Farmland Tax Law

And

The Open Space Tax Law

Farmland Tax Law

§1101-1121

In order to qualify for the farm land program, a land owner must:

- Own at least 5 contiguous acres.
- Produce a gross income of at least \$2,000 from farming activities in (1 of the 2) or (3 of the 5) calendar years preceding the date of application. Income from wood harvesting activities cannot be used to satisfy the income requirements.



Farmland Tax Law

- Submit an application to the local assessor(s) on or before April 1st, which must include a site plan or map designating the different farm classification areas, which may include woodland and wasteland.
- The woodland area located in a farm unit would be valued at the tree growth rates.



Farmland Rates

The values adopted by the municipality shall be based on such considerations as farmland rentals, farmer-to-farmer sales, and topography AFTER considering State developed guidelines for agricultural valuation.



Farmland Withdrawal

- If the property no longer qualifies as a farmland tract, it must be removed from the program and a penalty assessed.
- The penalty is equal to an amount of tax that would have been paid during the past five (5) years if not classified as farmland, less the tax actually paid, plus any interest for each year.
- Land transferred from either Tree Growth or Open Space must be classified in Farmland for at least ten (10) years in order to be withdrawn at the reduced penalty.



Open Space Tax Law

§1101-1121

- No minimum acreage requirement.
- Minimum areas and setbacks for non-conforming use must be excluded from classification.
- Tract must be restricted in use to provide a public benefit.



Open Space Provisions

- Submit an application to the local assessor(s) on or before April 1st, which must include a site plan or map designating the classified open space and unclassified areas.
- Applicant may be required to furnish proof as to the public benefit factor claim.



Public Benefit Factor

- A. The importance of the land by virtue of its size or uniqueness in the vicinity or proximity to extensive development or comprising an entire landscape feature;
- B. The likelihood that development of the land would contribute to degradation of the scenic, natural, historic or archeological character of the area;
- C. The opportunity of the general public to appreciate significant scenic values of the land;
- D. The opportunity for regular and substantial use of the land by the general public for recreational or educational use;
- E. The importance of the land in preserving a local or regional landscape or resource that attracts tourism or commerce to the area;
- **F. The likelihood that the preservation of the land as undeveloped open space will provide economic benefit to the town by limiting municipal expenditures required to service development;**
- G. Whether the land is included in an area designated as open space land or resource protection land on a comprehensive plan or in a zoning ordinance or on a zoning map as finally adopted;
- H. The existence of a conservation easement, other legally enforceable restriction, or ownership by a nonprofit entity committed to conservation of the property that will permanently preserve the land in its natural, scenic or open character;

Public Benefit cont.

- I. The proximity of other private or public conservation lands protected by permanent easement or ownership by governmental or nonprofit entities committed to conservation of the property;
- J. The likelihood that protection of the land will contribute to the ecological viability of a local, state or national park, nature preserve, wildlife refuge, wilderness area or similar protected area;
- K. The existence on the land of habitat for rare, endangered or threatened species of animals, fish or plants, or of a high quality example of a terrestrial or aquatic community;
- L. The consistency of the proposed open space use with public programs for scenic preservation, wildlife preservation, historic preservation, game management or recreation in the region;
- M. The identification of the land or of outstanding natural resources on the land by a legislatively mandated program, on the state, local or federal level, as particular areas, parcels, land types or natural resources for protection, including, but not limited to, the register of critical areas under Title 12, section 544-B; the laws governing wildlife sanctuaries and management areas under Title 12, section 10109, subsection 1 and sections 12706 and 12708; the laws governing the State's rivers under Title 12, chapter 200; the natural resource protection laws under Title 38, chapter 3, subchapter 1, article 5-A; and the Maine Coastal Barrier Resources Systems under Title 38, chapter 21;
- N. Whether the land contains historic or archeological resources listed in the National Register of Historic Places or is determined eligible for such a listing by the Maine Historic Preservation Commission, either in its own right or as contributing to the significance of an adjacent historic or archeological resource listed, or eligible to be listed, in the National Register of Historic Places; or
- O. Whether there is a written management agreement between the landowner and the Department of Inland Fisheries and Wildlife or the Department of Conservation as described in section 1102, subsection 10.

Open Space Valuation

Method One

Current use value may be determined by the sale price that particular open space parcel would command in the marketplace if it were required to remain in the open space category for which it qualifies.



Open Space Valuation

Method Two

The assessor may reduce the assessed valuation by the cumulative percentage reduction for which the land is eligible according to the following categories:



Open Space Valuation

- General application 20% reduction
- Public access 25% reduction
- Permanently protected 30% reduction
- Forever wild 20% reduction

Total possible cumulative reduction 95%



Open Space Withdrawal

- If open space classification no longer meets eligibility, the parcel is withdrawn and the landowner is assessed a penalty.
- The penalty depends on the time period the land was classified and the difference between the land's open space value and its fair market value (same penalty structure as tree growth).



Open Space Penalty Calculation

- The assessor shall impose a penalty for withdrawal of land classified as open space. The penalty is the greater of:
 - A. an amount equal to the taxes that would have been assessed for the previous 5 years had the real estate been assessed at its just value, less taxes paid for those years , plus interest at the prevailing rate for those years; or
 - B. an amount computed by multiplying the amount by which the fair market exceeds the current use value under open space by the following rates:
 - 1) 30% for land classified for less than 10 years
 - 2) for land classified for more than 10 years, subtract 1% from 30% for each full year until a rate of 20% is reached
 - 3) 20% for land classified for 20 years or more

All penalties collected are retained by the local municipality.



Current Use Appeals

- Taxpayers have 185 day from the date of commitment to appeal the decision of the local assessor. If the taxpayer is dissatisfied with the decision of the local assessors, he has 60 days to appeal to the State Board of Property Tax Review. If unsatisfied with the decision of the State Board, the next step is Superior Court.
- It is important to note that if no decision is rendered by the local assessor within 60 days, the appeal is deemed to be denied and the taxpayer can proceed to the State Board if he so desires.



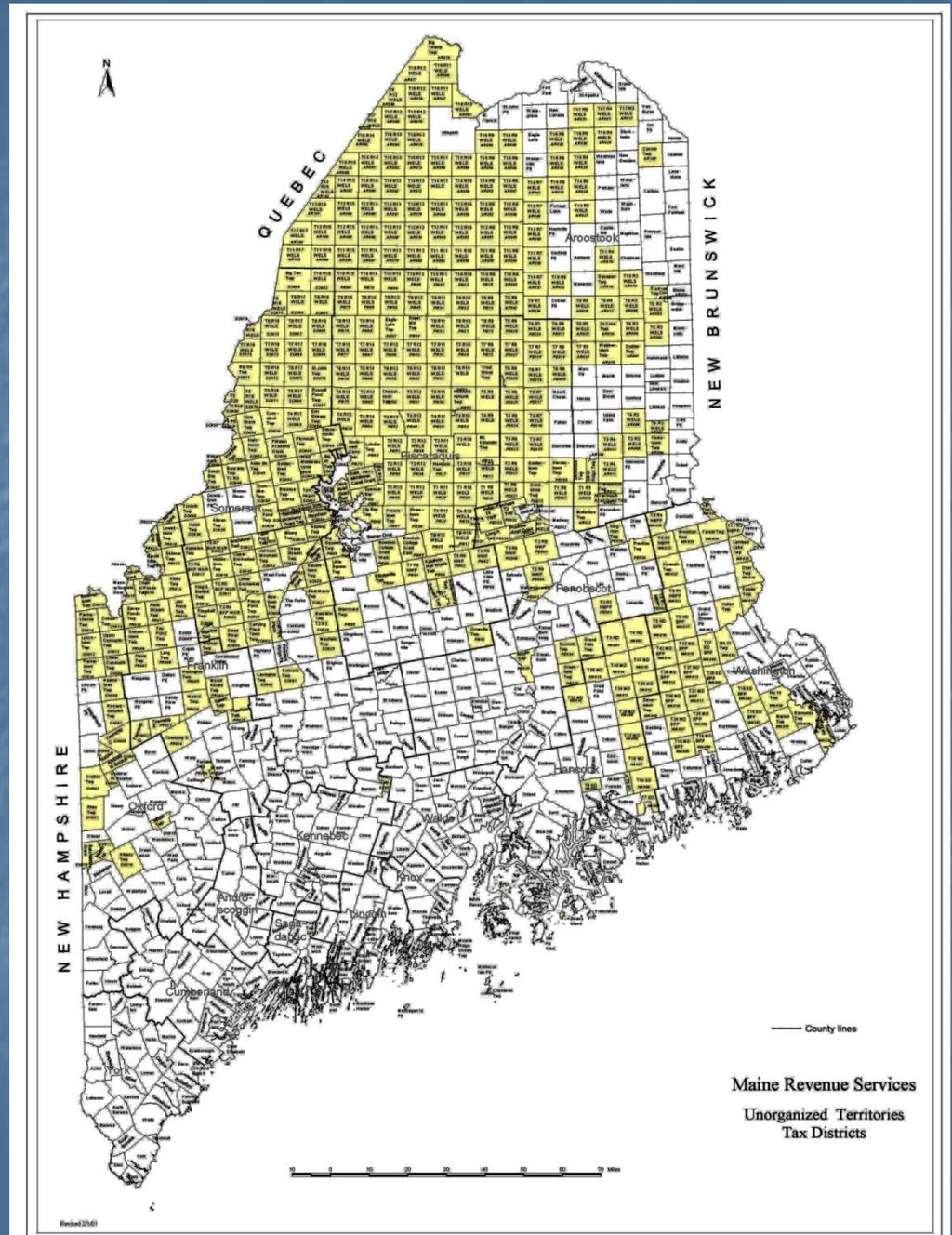
Maine has approximately 21 million acres of land:

11 million are enrolled in Tree Growth

99,000 acres of cropland and 162,700 acres of woodland are enrolled in the Farmland program

and 88,900 are enrolled in the Open Space program.

7.5 million of the Tree Growth totals are located in the Unorganized Territory.

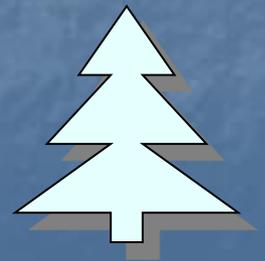


Tree Growth

§ 571-584A

TREE GROWTH TAX LAW

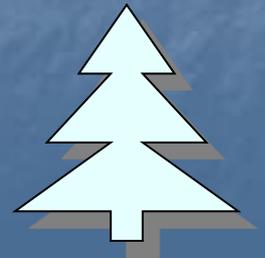
The Purpose is to tax all forest lands generally suitable for the planting, culture and continuous growth of forest products on the basis of their potential for annual wood production.



Tree Growth Provisions

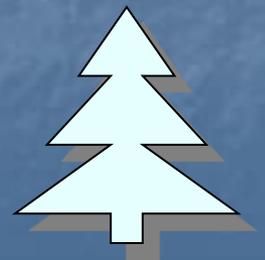
In order to be eligible for this program, the landowner must meet the following criteria:

- * Own at least 10 forested acres used for commercial harvesting.
- * Obtain a forest management and harvest plan certified by a licensed professional forester.



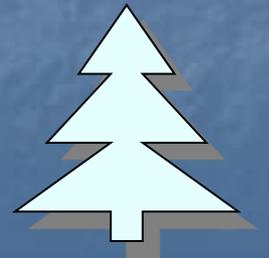
Tree Growth Provisions

- * Submit an application to the local assessor(s) on or before April 1st, which must include an attached site plan or map designating the classified tree growth and the area not classified as well as sworn proof by a licensed forester that a management plan exists.



Tree Growth Provisions

- Finally, once approved, the land owner must recertify to the local assessor(s) every ten years that a forest management and harvest plan still exists and is being followed.



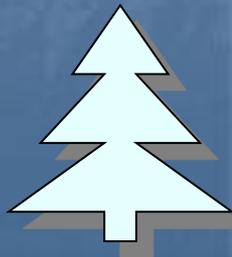
Tree Growth Value

- Each year the State Tax Assessor must establish the 100% valuation per acre for each forest type by economic region for parcels classified under this law.
- Current stumpage values are incorporated into a classification and value averaging system that estimates the worth of forest land.



Tree Growth Withdrawal

- If the forest land no longer meets the eligibility requirement, it must be removed from the program and a penalty assessed.
- No earlier than 185 days prior to a deadline established by section 574§B, if the landowner has not yet complied with the requirements of that section, the assessor must provide the landowner with written notice informing the landowner that failure to comply will result in the withdrawal of the property from taxation under this subchapter. The notice, at a minimum, must inform the landowner of the statutory requirements that need to be met and the date of the deadline for compliance and that the consequences of withdrawal could include the assessment of substantial financial penalties against the owner. If the notice is issued less than 120 days before the deadline, the owner has 120 days from the date of the notice to provide the assessor with the documentation to achieve compliance with section 574§B, and the notice must specify the date by which the owner must comply.
- The penalty depends on the time period the land was classified and the difference between the land's tree growth value and fair market value.



Tree Growth Penalty Calculation

The assessor shall impose a penalty for withdrawal of land classified as tree growth. The penalty is the greater of:

- A. an amount equal to the taxes that would have been assessed for the previous 5 years had the real estate been assessed at its just value, less taxes paid for those years , plus interest at the prevailing rate for those years; or
- B. an amount computed by multiplying the amount by which the fair market exceeds the current use value under working waterfront by the following rates:
 - 1) 30% for land classified for less than 10 years
 - 2) for land classified for more than 10 years, subtract 1% from 30% for each full year until a rate of 20% is reached
 - 3) 20% for land classified for 20 years or more
- C. If the owner(s) fail to report a change in use an additional penalty of 25% of the required penalty shall be assessed. This additional penalty may be waived for cause.

All penalties are assessed and collected as a supplemental tax and are retained by the local municipality.



LD 1138; Public Law c. 618

- Changes to Tree Growth:
 - Applications received after 8/1/12, the excluded area from tree growth must have minimum lot size.
 - Shorefront – residential structures located within shore land area must exclude 100' frontage.
 - Landowner must provide attestation of primary use (harvest for commercial use).
 - NON-COMPLIANCE –
 - All notices regarding recertification must be sent by certified mail.
 - If owner fails to meet deadline compliance (Section 574-B or transfer to OS) – supplemental assessment of \$500 will be assessed and property still TG classified.
 - Along with supplemental assessment, another certified notice will be mailed to owner giving 6 month to bring parcel into compliance.
 - At the end of 6 month another supplemental assessment of \$500 will be assessed and another 6 month notice.
 - At the end of the second 6 month notice property will be withdrawn from the tree growth classification and withdrawal penalty will be assessed §581(3).

2012 Tree Growth Changes

- **36 MRSA §573**

- **(6-A) Residential structure.** "Residential structure" means a building used for human habitation as a seasonal or year-round residence. It does not include structures that are ancillary to the residential structure, such as a garage or storage shed.

- **§ 574-B.Applicability**

- An owner of a parcel containing forest land may apply at the landowner's election by filing with the assessor the schedule provided for in section 579, except that this subchapter does not apply to any parcel containing less than 10 acres of forest land. For purposes of this subchapter, a parcel is deemed to include a unit of real estate, notwithstanding that it is divided by a road, way, railroad or pipeline, or by a municipal or county line. The election to apply requires the written consent of all owners of an interest in a parcel except for the State. For applications submitted on or after August 1, 2012, the size of the exclusion from classification under this subchapter for each structure located on the parcel and for each residential structure located on the parcel in shoreland areas is determined pursuant to section 574-C.

2012 Tree Growth Changes

- **§ 574-C. Reduction of parcels with structures; shoreland areas**
- If a parcel of land for which an owner seeks classification under this subchapter on or after August 1, 2012 contains a structure for which a minimum lot size is required under state law or by municipal ordinance, the owner in the schedule under section 579 shall apply the following reduction to the land to be valued under this subchapter.
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- **1. Structures.** For each structure located on the parcel for which a minimum lot size is required under state law or by municipal ordinance, the owner in the schedule under section 579 shall exclude from the forest land subject to valuation under this subchapter the area of land in the parcel containing the structure or structures, which may not be less than 1/2 acre.

2012 Tree Growth Changes

- **2. Shoreland areas.** For each residential structure located within a shoreland area, as identified in Title 38, section 435, the owner in the schedule under section 579 shall exclude from the forest land subject to valuation under this subchapter the area of land in the parcel containing the structure or structures, which may not be less than 1/2 acre, and the excluded parcel must include 100 feet of shoreland frontage or the minimum shoreland frontage required by the applicable minimum requirements of the zoning ordinance for the area in which the land is located, whichever is larger. If the parcel has less than 100 feet of shoreland frontage, the entire shoreland frontage must be excluded. This subsection does not apply to a structure that is used principally for commercial activities related to forest products that have commercial value as long as any residential use of the structure is nonrecreational, temporary in duration and purely incidental to the commercial use.

2012 Tree Growth Changes

- **4. Attestation.** Beginning August 1, 2012, when a landowner is required to provide to the assessor evidence that a forest management and harvest plan has been prepared for the parcel or updated pursuant to subsection 1, or when a landowner is required to provide evidence of compliance pursuant to subsection 2, the landowner must provide an attestation that the landowner's primary use for the forest land classified pursuant to this subchapter is to grow trees to be harvested for commercial use or that the forest land is land described in section 573, subsection 3, paragraphs A, B, C or E. The existence of multiple uses on an enrolled parcel does not render it inapplicable for tax treatment under this subchapter, as long as the enrolled parcel remains primarily used for the growth of trees to be harvested for commercial use.

2012 Tree Growth Changes

- **36 MRSA §581, sub-§1-A, Notice of compliance.**
- No earlier than 185 days prior to a deadline established by section 574-B, if the landowner has not yet complied with the requirements of that section, the assessor must provide the landowner with written notice by certified mail informing the landowner of the statutory requirements that need to be met to comply with section 574-B and the date of the deadline for compliance or by which the parcel may be transferred to open space classification pursuant to subchapter 10. The notice must also state that if the owner fails to meet the deadline for complying with section 574-B or transferring the parcel to open space classification, a supplemental assessment of \$500 will be assessed and that continued noncompliance will lead to a subsequent supplemental assessment of \$500. If the notice is issued less than 120 days before the deadline, the owner has 120 days from the date of the notice to provide the assessor with the documentation to achieve compliance with section 574-B or transfer the parcel to open space classification, and the notice must specify the date by which the owner must comply.

■ Huh?

2012 Tree Growth Changes

- **36 MRSA §581, sub-§1-A, Notice of compliance.**
- 120 day notice:
 - No earlier than 185 days prior to a expiration of 10 year plan
 - notice by certified mail
 - informing the landowner of the need to comply
 - Stating the date of the deadline for compliance
 - Must say the parcel may be transferred to open space classification
 - must also state that if the owner fails to meet the deadline for complying with section 574-B or transferring the parcel to open space classification, a supplemental assessment of \$500 will be assessed and that continued noncompliance will lead to a subsequent supplemental assessment of \$500.

2012 Tree Growth Changes

If taxpayer does not comply with the requirements of the 120 day notice, the assessor shall:

- impose a \$500 penalty to be assessed and collected as a supplemental assessment
- send the supplemental assessment by certified mail,
- notify the landowner that, no later than 6 months from the date of the 2nd notice, the landowner must comply or transfer the parcel to open space and that failure to comply will result in an additional supplemental assessment of \$500 and the landowner will have an additional 6-month period in which to comply with these requirements before the withdrawal of the parcel and the assessment of substantial financial penalties against the landowner.

2012 Tree Growth Changes

If after 6 months the taxpayer does not comply with the requirements of the second notice, the assessor shall:

- impose another \$500 penalty send the supplemental assessment by certified mail,
- notify the landowner that, no later than 6 months from the date of the 2nd notice, the landowner must comply or transfer the parcel to open space and that failure to comply will result in the withdrawal of the parcel and the assessment of substantial financial penalties against the landowner.

2012 Tree Growth Changes

If after 6 months the taxpayer does not comply with the requirements of the second notice, the assessor shall withdraw the parcel from Tree Growth and assess a (full) penalty

Phew!

2012 Open Space Changes

(same bill)

36 MRSA §1102, sub-§§4-A and 4-B are enacted to read:

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- **4-A. Forest management and harvest plan.** "Forest management and harvest plan" means a written document that outlines activities to regenerate, improve and harvest a standing crop of timber. A plan must include the location of water bodies and wildlife habitat as identified by the Department of Inland Fisheries and Wildlife. A plan may include, but is not limited to, schedules and recommendations for timber stand improvement and harvesting plans and recommendations for regeneration activities. A plan must be prepared by a licensed professional forester or a landowner and be reviewed and certified by a licensed professional forester as consistent with sound silvicultural practices.
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- **4-B. Forested land.** "Forested land" means land that is used in the growth of trees but does not include ledge, marsh, open swamp, bog, water and similar areas that are unsuitable for growing trees.

2012 Open Space Changes

Sec. 6. 36 MRSA §1106-A, sub-§2, ¶E is enacted to read:

E. Managed forest open space land is eligible for the reduction set in paragraphs A, B and D and an additional 10%.

2012 Open Space Changes

36 MRSA §1112, 3rd paragraph, the following is added:

The recapture penalty for withdrawal from open space classification within 10 years of a transfer from tree growth classification occurring on or after August 1, 2012 is the same that would be imposed if the land were being withdrawn from the tree growth classification. The recapture penalty for withdrawal from open space classification more than 10 years after such a transfer will be the open space recapture penalty provided for in this section.

For More information...

- Visit our website
www.maine.gov/revenue/propertytax
- Email: Prop.tax@maine.gov
- Call Maine Revenue Services 624-5600
- Call your local tax assessor