

# A Primer on Property Tax Exemption Procedural Choices

*Part of a series of MANP documents created to enhance understanding of the rules and regulations governing Maine's nonprofit organizations.*

*Thank you to Robert H. Levin, Attorney at Law ([www.roblevin.net](http://www.roblevin.net)), for drafting this white paper with assistance from Jack Erler and David Lourie. This paper is provided solely for informational purposes and should not be relied on as legal advice. You are strongly encouraged to consult a qualified attorney for advice on any particular situation.*

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## Background

As the number and types of Maine nonprofit organizations has grown in recent decades, they have sometimes run into obstacles when seeking property tax exemption. Although most municipalities routinely grant exemption, a few have resisted, and the lack of crystal clear statutory or case law has given towns justification for such resistance.

Every year or two the Maine Supreme Judicial Court is asked to interpret Maine's property tax exemption statute for charitable institutions or a similar statute for literary and scientific institutions (both located at [36 M.R.S. § 652\(1\)](http://36.M.R.S. § 652(1)), [www.mainelegislature.org/legis/statutes/36/title36sec652.html](http://www.mainelegislature.org/legis/statutes/36/title36sec652.html)). The most recent published opinion, from early 2013, was [Hebron Academy v. Town of Hebron](http://www.courts.state.me.us/opinions_orders/supreme/lawcourt/2013/13me15he.pdf) ([www.courts.state.me.us/opinions\\_orders/supreme/lawcourt/2013/13me15he.pdf](http://www.courts.state.me.us/opinions_orders/supreme/lawcourt/2013/13me15he.pdf)), holding that a private high school was a scientific and literary institution. There is also a pending case involving land conservation property (Francis Small Heritage Trust v. Town of Limington), where the Court is expected to rule over the summer or fall. In this latter action, Attorney Robert Levin ([www.roblevin.net](http://www.roblevin.net)), who drafted this white paper, is representing the Land Trust Alliance, which has filed an amicus curiae brief in support of the land trust.

## Purpose

This article will not delve into the substantive law on whether a particular use is a charitable, scientific or literary purpose for property tax exemption purposes. Rather, it will **focus on the procedural choices open to Maine nonprofit organizations** as they decide whether and how to seek property tax exemption in the face of municipal resistance.

This article will offer **a chronological guide to the property tax exemption process**, with suggestions and reflections along the way. However, this article necessarily summarizes a complicated area of law, and no organization should rely on this article as legal advice. We encourage you to retain a qualified attorney for advice particular to your organization's situation.

## Step One: Determine If Your Organization Will Apply for Exemption

There is no right answer to the question of whether a nonprofit organization should apply for property tax exemption for any particular parcel. Some organizations routinely seek exemption for every parcel they own, others never do. Some adopt a compromise approach by obtaining exemption and then making a payment in lieu of taxes. In some cases, the parcel might not be eligible for exemption – where a landowner has reserved usage rights, for example, or where the property is being used primarily for commercial purposes or is rented out for non-charitable activities such as residential use or more than occasional weddings or other private events.

**If your organization decides to apply for exemption, proceed to Step 2.**

## Step Two: Apply for Property Tax Exemption

Applications for property tax exemption are filed with the municipality or, in the case of the Unorganized Territories, with Maine Revenue Services (MRS). Applications must be received by April 1 in order to be applicable to that tax year.

Most towns use a very simple two-page application form provided by MRS and located online at [www.maine.gov/revenue/forms/property/apps/exemptapp.pdf](http://www.maine.gov/revenue/forms/property/apps/exemptapp.pdf), but check with the town assessor to make sure. The form requires:

- ▶ a brief statement of the purposes for which the property is used,
- ▶ copies of the organization's Articles of Incorporation,
- ▶ Bylaws, and
- ▶ a copy of the property deed.

The form does not require any financial information, although municipalities have the right to request a financial report for the organization's preceding fiscal year.

The good news is that the application form is so simple that it could take only a few minutes to complete. The bad news is that the form is so simple that nonprofits are sometimes lulled into scratching out a few sentences about the property's use, and the assessor can deny an application based on a lack of details. **If the exemption decision is at all in doubt, treat the application more rigorously than the form would suggest.** For example, include a detailed description of the property, how it will be used, and the organization's recent financial information. Try to explain how your organization's use of the property will benefit the public.

The assistance of an attorney is not required at this stage, although it might very well be useful, especially if the organization has never before applied for exemption or anticipates resistance from the town. An attorney can also assist in making sure that your organization and the particular parcel meet all of the elements for property tax exemption, as spelled out in 36 M.R.S. § 652(1) and as set forth by various Maine Law Court decisions. For example, you'll want to make sure that the purposes provision in your Articles of Incorporation and Bylaws is tightly drafted. What you want to avoid is investing considerable time and expense on the exemption process, only to be tripped up on an issue that could have been spotted and dealt with at the initial application stage.

Once a property is granted exemption for a particular year, the law does not require repeat applications every year, although some organizations do go to this trouble to avoid any shadow of a doubt.

- ▶ **If your exemption application is accepted**, then kick back and relax with a hot cup of joe – at least for now, as there is nothing stopping an assessor from changing her mind in a subsequent year, and recent case law from the Law Court confirms that organizations do not receive the benefit of the doubt from having received exemption in a prior year.
- ▶ **However, if your application is denied**, then you have two primary avenues of redress. Your organization can either file a declaratory judgment action in Superior Court (Step 3A) or file an abatement application (Step 3B).

Note that it is sometimes confusing to know whether an exemption application has been denied. Assessors often do not issue a formal written denial, but instead simply issue a property tax bill to the applicant. However, you are entitled to a written decision setting forth the reasons for denial of any application under Maine's Freedom of Access Law (1 MRS Section 407.1), so you can probably demand an answer. If you cannot get a response you may want to consult an attorney at this point.

## Step Three

### **Alternative Step 3A: File Declaratory Judgment Action in Superior Court**

Maine's law of property tax exemption is unusual in that it provides a direct route to Superior Court via what is known as a Declaratory Judgment (DJ) action. This is an exception to the usual rule of Maine municipal law, in which a municipality must have made a final decision and the landowner must exhaust all administrative appeals. The DJ action route was blessed by the Law Court in *Maine Central R.R. Co. v. Town of Dexter*, 588 A.2d 289, 292 (Me.1991).

Keep in mind that a DJ action will ask the court to declare whether your organization is exempt going forward. It will not directly affect taxes assessed for the current year. Sometimes a DJ Action should be filed prior to and instead of an abatement application, but occasionally the two are filed simultaneously and the Town is requested to "stay" its abatement process until it receives guidance from the court. The timing and interplay between the DJ action and the abatement/administrative process is complicated, and professional advice is strongly recommended as to the best approach for your organization.

There are various advantages of going straight to Superior Court with a DJ action rather than pursuing an abatement, especially if your organization is pessimistic that the abatement and follow-up appeals process will bear fruit and you will eventually wind up in court anyway. Though we don't have statistics, the conventional wisdom is that the abatement and following administrative appeals (see Steps 3B and 4) usually are not successful in changing the assessor's initial determination. A judge is likely to be more knowledgeable about the law and more neutral about the facts. In addition, the procedural rules and time limits of a DJ action are well established and clearer.

Of course, litigation is inherently unpredictable, so it is difficult to give an estimate on how much a DJ action typically costs, but a reasonable range is somewhere between \$10,000 and \$25,000 to get you through the Superior Court process, depending on whether there are lots of disputed facts or issues and how cooperative the Town and its attorney are.

- ▶ **If your organization wins at the Superior Court level** and the town does not appeal, then kick back and relax with a tall cup of chocolate milk.
- ▶ **If your organization loses at the Superior Court level**, or if it wins but the town appeals, then you can skip the next several steps and proceed to Step 6, an appeal to the Maine Supreme Court.

### Alternative Step 3B: File Abatement Application

A property owner has 185 days from the town's property tax commitment date (which is usually shortly before the tax bill is mailed – but call town to be sure of exact date) to file for an abatement. An abatement is filed with the assessor, on a form found at [www.maine.gov/revenue/forms/property/apps/abatementapp.pdf](http://www.maine.gov/revenue/forms/property/apps/abatementapp.pdf). Any hearing on an abatement application will be informal, involving primarily the assessor, the taxpayer, and often the taxpayer's counsel. An assessor has 60 days from receipt of the application to make a final decision, and must notify applicant within 10 days of final decision See 36 M.R.S. § 841 for the details on abatement procedure.

If an organization has not previously retained the services of legal counsel, it is prudent to do so in connection with preparing the abatement application. If you want to proceed to court at the end of the town- or county-level process, your court appeal will be limited to the record created before the town or county. Thus, it is important in the abatement process that you include all the facts necessary to ultimately prevail in court. This generally means that the abatement application will require more detail than the initial exemption application, and sometimes it will require an analysis of the law of exemption as it applies to your organization's particular use. As with the exemption application form, the abatement application form is very simple, and it behooves nonprofit organizations to provide much more information than the form seems to require. One of the most common reasons for an assessor to deny an exemption application or an abatement application is because of the minimal information provided.

- ▶ **If the abatement application is granted**, then kick back and relax with a cool glass of lemonade.
- ▶ **If your abatement application is denied**, then your organization will have to decide whether to proceed to Step 4.

### Step 4: Appeal to Municipal Board of Assessment Review or County Commissioners

The next step after an abatement application is denied is to file an appeal with the municipal Board of Assessment Review (BAR), or, if the town does not have such a Board, with the County Commissioners. The landowner has 60 days from the date of the assessor's decision on the abatement application to file this appeal. At the municipal or county level, members of the Board usually have no experience or training with tax exemption issues, as most of their work applies to the fair valuation of properties. They will often be represented by legal counsel, and it is wise for nonprofits to be represented by this point as well. Before applying, the organization's legal counsel should ask for a copy of any procedural rules that apply to the Board's or Commissioners' proceedings. An appeal to the BAR or County Commissioners typically entails a written submission, which is often an elaboration upon materials submitted as part of the exemption application or abatement application. Furthermore, the organization may wish to include letters of support from its state legislators, town business owners, and other people of influence. Also keep in mind that the

BAR appeal is usually the organization's last step before reaching Superior Court, thus it is important to make sure all materials are submitted at least by this step of the process, so as to build an extensive administrative record for the court's review.

The written submissions are typically followed by a hearing, at which the organization's representatives and the assessor can state their cases. This hearing is open to the public and may be an opportunity for local press to cover the matter.

- ▶ **If the BAR appeal is granted**, then kick back and relax with a neat Shirley Temple.
- ▶ **If the BAR appeal is denied**, then you'll have 30 days to decide whether to proceed to Step 5, a Rule 80B appeal to the Superior Court. However, if the assessed value of your non-residential property is \$1,000,000 or greater you will be required to proceed to the State Board of Property Tax Review before you can get to court.

## Step 5: Rule 80B Appeal to Superior Court

A Rule 80B action is an appeal of a government agency's action. The Superior Court reviews the government's action in the context of the administrative record. It reviews any questions of law (but not the facts) de novo, meaning that the town's or county's interpretation of the law is not given any special deference. By this point in the process, all of the organization's facts, background documents, and legal arguments should have been presented to the assessor and the BAR. Nevertheless, it is imperative to have an attorney represent the organization, and the Rule 80B process will often cost in the neighborhood of \$10,000 to \$25,000 in legal fees. Each party files briefs and the court holds oral arguments. The entire process generally takes four to six months.

- ▶ **If you win** on the Rule 80B appeal and the town doesn't appeal, then kick back and relax with a whiskey sour (please drink responsibly!).
- ▶ **If you lose, or if you win and the town appeals**, then you'll have to decide whether to proceed to Step 6, an appeal to the Maine Supreme Court.

## Step 6: Appeal to the Maine Supreme Court

Unlike other states where the top court has discretion to accept or decline to take up an appeal, the Maine Supreme Judicial Court must take up every appeal from a Superior Court final judgment. Appeals to the Supreme Court must be carefully considered, as most opinions by the court set binding precedent for interpretations of Maine law. Supreme Court appeals often run in the neighborhood of \$10,000 to \$15,000 in legal fees.

- ▶ **If you win before the Maine Supreme Court**, then kick back and relax with a magnum of champagne (please drink responsibly!).
- ▶ **If you lose before the Maine Supreme Court**, then kick back and relax with a bottle of seltzer water. There's no further appeal beyond the Maine Supreme Court unless a federal constitutional issue has been raised, which is unlikely for property tax exemption cases. However, also keep in mind that each tax year is a new year and an exemption may again be sought de novo the following year, perhaps after you've been able to change some of the facts that led to your exemption denial.