

SPECIAL TOWN COUNCIL MEETING

Monday, September 14, 2015

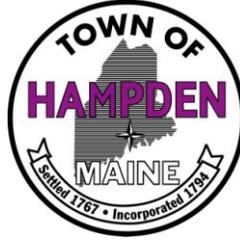
7:00 pm

Hampden Town Office

AGENDA

1. Hughes Bros. Personal Property Tax Abatement Request –
Continued from September 1, 2015 Council Meeting

Town of Hampden
106 Western Avenue
Hampden, Maine 04444



Phone: (207) 862-3034
Fax: (207) 862-5067
Email:
townmanager@hampdenmaine.gov

TO: Town Council

FROM: Angus Jennings, Town Manager

DATE: September 10, 2015

RE: Hughes Bros. Abatement

The status of the Hughes Bros. operation as mining is of material significance to the personal property tax abatement hearing currently before the Council.

In support of the Council's consideration, following the initial hearing I requested that the Code Enforcement Officer (CEO) review the Hughes Bros. operations and render an opinion regarding which use category(ies) exist on the site. The Hampden Zoning Ordinance does not define "mining," but the term does appear in the Zoning definition of excavation:

"Excavation. Any digging, mining, or removal of borrow, topsoil, loam, rock, sand, gravel, clay, silt, or other similar non-metallic earth materials whether alone or in combination. (Amended 12-17-07)"

The memorandum from the CEO, which is based on his review of their Hampden operations, is attached. However, it is not clear to me, as a matter of law, whether the material issue in this matter is whether their Hampden operation is properly classified as "mining" or whether what's significant is the status of their Winterport operation – the location of the personal property in question. I have asked Tom Russell to include his opinion regarding this question in his memorandum, which is expected to be circulated tomorrow (Friday).

As he may elaborate in his memorandum, Tom consulted with the Maine DEP and learned that the Hughes Bros. Winterport facility has received permitting as a mining operation. This supplements materials previously on file that the Winterport site is federally regulated as a mining facility.

If the relevant operations (whether Hampden or Winterport) are classified as "mining" this would affect where personal property could properly be taxed – in the municipality

in which it is located.

If the relevant operations are not classified as “mining” – or another use enumerated in 36 M.R.S. Sec. 603 – then personal property would properly be taxed in the principal place of business of the corporation holding the property. In this instance, the Council must consider the abatement petition currently pending.



HAMPDEN PUBLIC SAFETY
Police – Fire – EMS – Code Enforcement

106 Western Avenue
Hampden, Maine 04444
Phone 207-862-4500
Fax: 207-862-4588



September 10, 2015

Angus Jennings, Manager
Town of Hampden
106 Western Ave
Hampden, Maine 04444

**Town of Hampden
RECEIVED**

SEP 10 2015

**Office of the
Town Manager**

Re: Existing Land Use of Map 20 Lot 051, Owned by Hughes Brothers, Inc.

Mr. Jennings,

I have been asked to evaluate the land use of the property noted above. After researching the Map/Lot record file in our electronic database I have come to find that the property has non-conforming uses and conforming uses.

The property has the following uses based on the Zoning Ordinance (Commercial Services District):

1. Retail – Permitted Use, found to be planning board approved
2. Business Office – Permitted Use, found to be planning board approved
3. Outdoor Display – Condition Use, found to be planning board approved
4. Industrial – Permitted Non-Conforming
5. Processing – Permitted Non-Conforming
6. Excavation – Permitted Non-Conforming
7. Gravel Pit – Permitted Non-Conforming
8. Buildings for essential service – Permitted Use, found to be planning board approved

The property has the following uses based on the Shoreland Zoning Ordinance in the portion of the lot which is in the General Development District. (Per Arial Photos currently being used by the Town)

1. Mineral Extraction – Permitted Use but assumed as use prior to Shoreland Zoning Ordinance adoption as no Shoreland Permit from Planning Board found.
2. Clear or removal of vegetation for activities other than timber harvesting – Permitted Use
3. Industrial – Permitted Use but assumed as use prior to Shoreland Zoning Ordinance adoption as no Shoreland Permit from Planning Board found.
4. Structures accessory to allowed use – Permitted Use

Please let me know if you need any more information.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Myles M. Block".

Myles M. Block
Code Enforcement Officer

Early 2014 I became aware of the Hughes Brothers operation of a pit in Winterport. I contacted Maine Revenue regarding the taxability of the equipment. I was provided with the last case law on record which is *Inhabitants of Leeds vs. Maine Crushed Rock and Gravel Company*. In that case Maine Crushed Rock had crushers, conveyors, a steam shovel, screens, a one ton Ford pickup and a narrow gauge locomotive (1928 court case). As the equipment was located in Leeds (principal place of business for the Company was Portland), they followed the general rule of MRSA Title 36, Part 2, Chapter 105 Subchapter 3 Section 602 where taxed "All personal property within or without the State, except in cases enumerated in section 603, shall be taxed to the owner in the place where he resides". That is the case 99.9% of the time. The Company took the Town to court and won, establishing the last case law set in this type of a property. I have previously provided the case law; along with a copy of Title 36 as noted above as well as section 603, the exceptions.

I contacted Mrs. Hughes regarding the pit equipment and the above case law after consulting with the Town Attorney and several other assessors for input. I requested a listing of the property on numerous occasions and was denied in writing. I have attached a copy of Title 36, Part 2, Chapter 105 Subchapter 5, commonly referred to as a 706 Notice. Mrs. Hughes has acknowledged that she did not file for abatement, because she did not file a list as required.

The typical process for an abatement is to first appeal to the Assessor; if the Assessor denies the request your next step is to the Board of Assessment Review and then if that is denied onto the State Board of Property Tax Review and finally Superior Court. The personal property function is able to be achieved in most one/two person or part time assessing offices by utilizing the 706 notice. I have attached a copy of the notice mailed in March 2015.

**Town of Hampden
RECEIVED**

SEP 10 2015

**Office of the
Town Manager**



Maine Revised Statutes

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§601

Title 36: TAXATION

§603

Part 2: PROPERTY TAXES

Chapter 105: CITIES AND TOWNS

Subchapter 3: PERSONAL PROPERTY TAXES

§602. -- where taxed

All personal property within or without the State, except in cases enumerated in section 603, shall be taxed to the owner in the place where he resides.

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**The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.
If you need legal advice, please consult a qualified attorney.**

Office of the Revisor of Statutes

7 State House Station

State House Room 108

Augusta, Maine 04333-0007

§603. Exceptions

The excepted cases referred to in section 602 are the following:

1. Personal property employed in trade. All personal property employed in trade, in the erection of buildings or vessels, or in the mechanic arts shall be taxed in the place where so employed, except as otherwise provided for in this subsection; provided the owner, his servant, subcontractor or agent occupies any store, storehouse, shop, mill, wharf, landing place or shipyard therein for the purpose of such employment.

A. For the purposes of this subsection, "personal property employed in trade" shall include both liquefied petroleum gas installations, and industrial and medical gas installations, together with tanks or other containers used in connection therewith. [1981, c. 106, (AMD).]

B. [1973, c. 592, §7 (RP).]

[1981, c. 106, (AMD) .]

1-A. Cargo trailers. A cargo trailer shall be taxed in the place where it is primarily located on April 1st, even though the cargo trailer may not be present in that place on April 1st.

For purposes of this subsection, "primary location" means the place where the cargo trailer is usually based and where it regularly returns for repairs, supplies and activities related to its use.

[1987, c. 303, (NEW) .]

2. Enumeration.

[2007, c. 627, §18 (RP) .]

2-A. Enumeration. The following personal property must be taxed in the place where it is situated:

A. Portable mills; [2007, c. 627, §19 (NEW).]

B. All store fixtures, office furniture, furnishings, fixtures and equipment; [2007, c. 627, §19 (NEW).]

C. Professional libraries, apparatus, implements and supplies; [2007, c. 627, §19 (NEW).]

D. Coin-operated vending or amusement devices; [2007, c. 627, §19 (NEW).]

E. All camper trailers, as defined in section 1481; and [2007, c. 627, §19 (NEW).]

F. Television and radio transmitting equipment. [2007, c. 627, §19 (NEW).]

[2007, c. 627, §19 (NEW) .]

3. Nonresidents. Personal property which is within the State and owned by persons residing out of the State shall be taxed either to the owner, or to the person having the same in possession, or to the person owning or occupying any store, storehouse, shop, mill, wharf, landing, shipyard or other place therein where such property is.

A. A lien is created on said property for the payment of the tax, which may be enforced by the tax collector to whom the tax is committed, by a sale of the property as provided.

B. A lien is created on said property in behalf of the person in possession, which he may enforce, for the repayment of all sums by him lawfully paid in discharge of the tax. If such person pays more than his proportionate part of such tax, or if his own goods or property are applied to the payment and discharge of the whole tax, he may recover of the owner such owner's proper share thereof.

4. Domestic fowl raised for meat purposes or egg production.

[1973, c. 592, §11 (RP) .]

5. Mules, horses, neat cattle and domestic fowl.

[1973, c. 592, §11 (RP) .]

6. Belonging to minors under guardianship. Personal property belonging to minors under guardianship shall be taxed to the guardian in the place where the guardian resides. The personal property of all other persons under guardianship shall be taxed to the guardian in the place where the ward resides.

7. Partners in business. Personal property of partners in business, when subject to taxation under subsections 1 and 2, may be taxed to the partners jointly under their partnership name; and in such cases they shall be jointly and severally liable for the tax.

8. Owned by persons unknown. Personal property owned by persons unknown shall be taxed to the person having the same in possession. A lien is created on said property in behalf of the

person in possession, which he may enforce for the repayment of all sums by him lawfully paid in discharge of the tax.

9. Certain corporations. The personal property of manufacturing, mining, smelting, agricultural and stock raising corporations, and corporations organized for the purpose of buying, selling and leasing real estate shall be taxed to the corporation or to the persons having possession of such property in the place where situated, except as provided in subsections 1 and 10.

[1981, c. 711, §6 (AMD) .]

10. Tax situs. The tax situs of tangible personal property shall be at the mine site if that property is:

A. Owned, leased or otherwise subject to possessory control of a mining company; and [1981, c. 711, §7 (NEW).]

B. On route to or from, being transported to or from or destined to or from a mine site. [1981, c. 711, §7 (NEW).]

Except as otherwise provided in this subsection, the tax situs of tangible personal property leased to a mining company shall be in the place where the property is situated.

For the purposes of this subsection, the definitions of section 2855 shall apply.

[1983, c. 776, §2 (AMD) .]

SECTION HISTORY

1967, c. 15, §1 (AMD). 1967, c. 90, (AMD). 1967, c. 480, §1 (AMD). 1971, c. 235, §2 (AMD).

1973, c. 592, §§7-11 (AMD). 1981, c. 106, (AMD). 1981, c. 711, §§6,7 (AMD). 1983, c. 776, §2 (AMD). 1987, c. 303, (AMD). 2007, c. 627, §§18, 19 (AMD).

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§705

Title 36: TAXATION

§707

Part 2: PROPERTY TAXES

Chapter 105: CITIES AND TOWNS

Subchapter 5: POWERS AND DUTIES OF ASSESSORS

§706. Taxpayers to list property, notice, penalty, verification

Before making an assessment, the assessor or assessors, the chief assessor of a primary assessing area or the State Tax Assessor in the case of the unorganized territory may give reasonable notice in writing to all persons liable to taxation or qualifying for exemption pursuant to subchapter 4-C in the municipality, primary assessing area or the unorganized territory to furnish to the assessor or assessors, chief assessor or State Tax Assessor true and perfect lists of all their estates of which they were possessed on the first day of April of the same year. [2013, c. 544, §5 (AMD); 2013, c. 544, §7 (AFF).]

The notice to owners may be by mail directed to the last known address of the taxpayer or by any other method that provides reasonable notice to the taxpayer. [1977, c. 509, §13 (RPR).]

If notice is given by mail and the taxpayer does not furnish the list, the taxpayer is barred of the right to make application to the assessor or assessors, chief assessor or State Tax Assessor or any appeal from an application for any abatement of those taxes, unless the taxpayer furnishes the list with the application and satisfies the assessing authority or authority to whom an appeal is made that the taxpayer was unable to furnish the list at the time appointed. [2013, c. 544, §5 (AMD); 2013, c. 544, §7 (AFF).]

The assessor or assessors, chief assessor or State Tax Assessor may require the person furnishing the list to make oath to its truth, which oath any of them may administer. [2013, c. 544, §5 (AMD); 2013, c. 544, §7 (AFF).]

The assessor or assessors, chief assessor or State Tax Assessor may require the taxpayer to answer in writing all proper inquiries as to the nature, situation and value of the taxpayer's property liable to be taxed in the State or subject to exemption pursuant to subchapter 4-C. As may be reasonably necessary to ascertain the value of property according to the income approach to value pursuant to the requirements of section 208-A or generally accepted assessing practices, these inquiries may seek information about income and expenses, manufacturing or

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operational efficiencies, manufactured or generated sales price trends or other related information. 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. Information provided by the taxpayer in response to an inquiry that is proprietary information, and clearly labeled by the taxpayer as proprietary and confidential information, is confidential and is exempt from the provisions of Title 1, chapter 13. An assessor of the taxing jurisdiction may not allow the inspection of or otherwise release such proprietary information to anyone other than the State Tax Assessor, who shall treat such proprietary information as subject to section 191, subsection 1, except that the exemption provided in section 191, subsection 2, paragraph I does not apply to such proprietary information. As used in this subsection, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the person submitting the information and would make available information not otherwise publicly available and information protected from disclosure by federal or state law or regulations. A person who knowingly violates the confidentiality provisions of this paragraph commits a Class E crime. [2013, c. 544, §5 (NEW); 2013, c. 544, §7 (AFF).]

A taxpayer's refusal or neglect to answer inquiries bars an appeal, but the answers are not conclusive upon the assessor or assessors, chief assessor or State Tax Assessor. [2013, c. 544, §5 (NEW); 2013, c. 544, §7 (AFF).]

If the assessor or assessors, chief assessor or State Tax Assessor fail to give notice by mail, the taxpayer is not barred of the right to make application for abatement; however, upon demand the taxpayer shall answer in writing all proper inquiries as to the nature, situation and value of the taxpayer's property liable to be taxed in the State. A taxpayer's refusal or neglect to answer the inquiries and subscribe the same bars an appeal, but the list and answers are not conclusive upon the assessor or assessors, chief assessor or the State Tax Assessor. [2013, c. 544, §5 (AMD); 2013, c. 544, §7 (AFF).]

SECTION HISTORY

1969, c. 579, §§3-5 (AMD). 1973, c. 536, §23 (AMD). 1973, c. 620, §16 (AMD). 1973, c. 695, §12 (RPR). 1975, c. 623, §54 (AMD). 1977, c. 509, §13 (RPR). 1981, c. 30, §§1,2 (AMD). 2013, c. 544, §5 (AMD). 2013, c. 544, §7 (AFF).

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March 2015

Kelly J. Karter, CMA
Assessor

**2015 PERSONAL
HAMPDEN, MAINE**

PROPERTY TAX RETURN

The tax situs date in the
This Personal Property Tax
owners of taxable personal
36 Section 706, M.R.S.A.

State of Maine is April 1st.
Return is provided to assist all
property in complying with Title

What is taxable? **ALL** items are taxable unless specifically exempt by state law. In Maine, any and all items of personal property employed in trade, business, manufacturing, or any income producing enterprise (whether or not a profit is realized) are subject to the property tax. Depreciation for accounting or Internal Revenue Service purposes is not a factor. An item fully depreciated for accounting purposes must be reported and is subject to property tax.

Note to Equipment Rental Businesses: Leased items are considered taxable unless they are held for the purpose of resale. Any claim for exemption of these items must be accompanied by documentation proving the items are indeed held for the purpose of resale and not rental purposes.

How to File: Make a **detailed** list of your property following the directions on this form. A report which shows what you were assessed on last year is enclosed. You may make changes on the report by drawing a line through items you no longer have and adding new items on the declaration form. Please sign the back of the form and be sure to keep a copy for your files. Filing Deadline is May 15, 2015.

Attention Lease Companies: If you no longer have equipment in the Town of Hampden, you must file this form stating that the equipment has been moved or purchased by the local business. Thank you.

BETE Business Equipment Tax Exemption: This application MUST be filled out **EVERY** year in order to qualify. I have included an application with this form

As you may know, the legislature has passed an exemption for business equipment placed in service after April 1, 2007 (BETE). This exemption does not apply to qualified retail business equipment; retail business equipment will continue to qualify under the BETR program we are familiar with. Therefore you must list (declare) all equipment, the date placed in service, and the original cost of the equipment. See the enclosed application and program description.

If you need assistance, or have questions, please call the Assessor's Office at (207) 862-4500. Thank you for your cooperation. THIS SCHEDULE MUST BE RETURNED TO THE ADDRESS ABOVE, ON OR BEFORE MAY 15, 2015.

PERSONAL PROPERTY DECLARATION

THIS STATEMENT IS FOR USE ONLY BY AUTHORIZED EMPLOYEES OR REPRESENTATIVES OF THE TOWN OF HAMPDEN AND IS NOT FOR PUBLIC INSPECTION. (PLEASE TYPE OR PRINT AND REMEMBER TO SIGN THE LAST PAGE.)

Name _____ Location in Hampden _____

Mailing Address _____

Check correct title (Owner will be assumed unless otherwise noted).
() Owner () Party in possession

GENERAL INSTRUCTIONS

List all personal property and leased equipment in your possession as of April 1, 2015. Include fully depreciated items even though they may not be on your books. Include items you may have expensed and may not be capitalizing. Those owners that have the ability to furnish computer data or wish to use other reporting methods may do so if the information requested on this form is furnished. If additional space is needed, please list on a separate sheet.

Code 1

Furniture and Fixtures

Typical items found in offices, and stores.

Quantity	Year of Manufacture	Year Acquired	Description	Acquisition Cost
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Code 2

Machinery and Equipment

Mechanical items and office equipment.

Quantity	Year of Manufacture	Year Acquired	Description	Acquisition Cost
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Code 3

Telecommunications Equipment

Phones, Faxes, Modems

Quantity	Year of Manufacture	Year Acquired	Description	Acquisition Cost
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Code 4
Computer Equipment & Software & Printers

Quantity	Year of Manufacture	Year Acquired	Description	Acquisition Cost

Code 5
Miscellaneous Items

Rental equipment, storage/cargo trailers, liquid propane tanks and other items not included above.

Quantity	Year of Manufacture	Year Acquired	Description	Acquisition Cost

Code 6
Field Crop Equipment

Machinery used in production of hay and field crops, excluding motor vehicles.

Quantity	Year of Manufacture	Year Acquired	Description	Acquisition Cost

Code 7
Manufacturing Equipment

Equipment used to produce goods.

Quantity	Year of Manufacture	Year Acquired	Description	Acquisition Cost

**Code 8
Leased Equipment**

Include items you are truly leasing, but not those items that the lease is only a financing instrument. Those items should be included under the previous codes.

TYPE: _____

COST: _____

BOOK VALUE: _____

MONTHLY RENT: _____

OWNERS NAME: _____

OWNERS MAILING ADDRESS: _____

* Yes, I intend to file a 2014 Business Property Tax Reimbursement (BETR) Application and will send the completed form to the Assessor when it becomes available.

I hereby certify having carefully read the above, that the report is true and correct, to the best of my knowledge and belief.

Signed: _____

Date: _____

Print Name: _____

Official Title: _____

Person authorized to disclose records: _____

Daytime Telephone # _____

TOWN OF HAMPDEN
Assessor's Office
106 Western Avenue
Hampden, ME 04444

Phone: (207) 862-4500
Fax: (207) 862-5067

Maine Revenue Services - Property Tax Division
Business Equipment Tax Exemption Application
 (Title 36 § 691 - 700B)

This application must be filed every year with the municipal assessor no later than May 1st

Name of Business: _____ Type of Business _____
 Business Address: _____ Account # _____
 Name of Owner: _____

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	(See instructions on reverse page) Description of the Exempt Equipment (please be specific)	Purchased / Placed in Service in Maine (Month / Year)	Current Age	Cost or Value New	Estimate of Current Value	Physical Address of Equipment (Leased Equipment Only)	To be Completed by the Assessor		
							TIF (Y / N)	BETE Eligible (Y / N)	Assessed Value

Applicant (or property owner) signature: Under penalties of perjury, I declare that I have examined this application and accompanying schedules and, to the best of my knowledge and belief, they are true, correct and complete. Declaration of preparer (other than applicant) is based on all the information of which the preparer has knowledge.

Applicant _____ Date _____
 Preparer _____ Date _____

Assessor (or agent of the assessor) signature: Under penalties of perjury, I declare that I have examined this application and accompanying schedules and, to the best of my knowledge and belief, they are true, correct and complete.

Assessor (or Agent of the Assessor) Signature _____ Date _____

Business Equipment Tax Exemption Application

What is BETE (Business Equipment Tax Exemption)?

BETE is a 100% property tax exemption program for eligible property that would have been first subject to tax in Maine on or after 4/1/08. BETE does not replace the BETR program (Business Equipment Tax Reimbursement). The BETR program remains in place for qualified property placed in service after April 1, 1995 and on or before April 1, 2007 and for retail/service property placed in service after April 1, 1995. (See <http://www.maine.gov/revenue/taxrelief/homepage.html> for more BETR information).

1. When and where to file application? This application is to be filed by April 1st of each year with the local assessor even if no changes in property status has occurred from the prior year. An automatic extension to May 1st is granted if the April 1st deadline is not met. An assessor may extend beyond May 1st upon receipt of written request.

2. What property is BETE eligible business equipment? Eligible business equipment is qualified property that would have been first subject to tax in Maine on or after 4/1/2008 and includes repair parts, replacement parts, replacement equipment, additions, accessories and accessories to other business property and inventory parts.

3. What property does not qualify for BETE? Property that does not qualify includes office furniture, lamps and lighting fixtures used primarily for general office or worker lighting, property owned or used by an excluded person, telecommunications personal property, gambling machines or devices and property located at a retail sales facility and used primarily in a retail sales activity. (See 5 Below)

4. Who does not qualify for BETE? Property owned or used by an "excluded person" does not qualify. Excluded persons include: public utilities, persons providing radio paging service, persons providing mobile telecommunications services, cable television companies, persons providing satellite based direct television broadcast services and persons providing multichannel multipoint television services.

5. What is excluded from BETE? BETE does not apply to property located at a retail sales facility and used primarily in a retail sales activity. Such property may qualify for reimbursement under the BETR program. A retail sales facility is a structure used to serve customers who are present at the facility for the purpose of selecting and purchasing goods or services at retail or for renting tangible personal property. A warehouse or call center facility is not considered a retail sales facility. Retail sales activity is associated with the selection and purchase of goods or services or the rental of tangible personal property. Manufacturing or processing is not considered retail sales activity.

TAXPAYER INSTRUCTIONS

Description of the Exempt Equipment: Description should be specific enough to be able to identify the property: (i.e. 2009 Bobcat model 236D skid steer loader, 2012 Ditch Witch trencher model RT30).

Date First Purchased/Placed In Service in Maine: list date equipment first put into service in Maine. Only equipment placed in service after April 1, 2007 is eligible for BETE.

Cost of Value New: The value of the equipment when it was new or what it would cost to purchase new. Include all installation costs.

Estimate of Current Value: Estimate of the current value of this piece of equipment.

Current Age: (for depreciation purposes) The total number of years this equipment has existed.

ASSESSOR INSTRUCTIONS

Located in a TIF District Is the equipment located within a Tax Increment Financing District

Assessed Value: assessed value = depreciated value X certified ratio