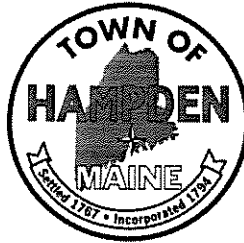


Town of Hampden  
106 Western Avenue  
Hampden, Maine 04444



Phone: (207) 862-4500  
Fax: (207) 862-5067  
[assessor@hampdenmaine.gov](mailto:assessor@hampdenmaine.gov)

To: Susan Lessard and Hampden Council Members  
From: Kelly Karter, Certified Maine Assessor  
Re: Hughes Abatement Request  
Date: July 2, 2015

Upon receipt of the above information today, I am offering the following information regarding the abatement request.

1. I requested on a number of occasions, in writing and verbally, to inspect the property located in Winterport and was denied. These requests began March 3, 2014 and I was not allowed into the pit until April 14, 2015. I have attached some of the e-mails.
2. I requested, but was not provided a listing of personal property per Title 36 Section 706, M.R.S.A.
3. I have spoken with Maine Revenue Services Director David Ledew a number of times.
4. David Ledew provided me with the attached court case *Inhabitants of Leeds vs Maine Crushed Rock and Gravel Company*.
5. I contacted other assessors with similar companies and have attached a response I received.
6. Mrs. Hughes claimed that they had an office in Winterport. I asked the Winterport Assessor if that was true. You will find correspondence from Herb Dickey, Winterport Assessor and Janet Hughes attached as a result of this request.
7. After no response, just prior to commitment, I compiled a listing as a result of the photos, information from Mr. Dickey, and general information on crushing sites and the basic equipment needed for that type of an operation.
8. On April 23, 2015 I issued an abatement for the "permanently" affixed property, leaving taxes due on two loaders, a large dump truck and a portable screen with conveyors. That abatement was in the amount of \$10,654.00 (see attached). Technically I was not bound by law to do so as they failed to submit a listing of property, denied me access and did not file for an abatement. I did so as it was an error in the assessment and felt it was the fair thing to do.
9. I have forwarded the submitted letter from Mrs. Hughes to David Ledew, Director of Maine Revenue Property Tax Division. I have attached his response as well as the attachments.
10. One year from the date of commitment will be August 18, 2015.



Kelly Karter <assessor@hampdenmaine.gov>

**Gravel pit**

3 messages

**Ledew, David P** <David.P.Ledew@maine.gov> Tue, May 27, 2014 at 9:00 AM  
To: "Kelly Karter (assessor@hampdenmaine.gov)" <assessor@hampdenmaine.gov>

David Ledew, Director  
Property Tax Division  
Maine Revenue Services  
207 624-5601

*After speaking w/David  
Ledew he e-mailed  
the Leeds v Maine  
Crushed Rock case*

**Leeds v Maine Crushed Rock.doc**  
24K

**Kelly Karter** <assessor@hampdenmaine.gov> Tue, May 27, 2014 at 12:00 PM  
To: "Ledew, David P" <David.P.Ledew@maine.gov>

Hi Dave,

Thanks for the information! I am again, having an issue with New England Waste. They have, through their agent, filed for BETE on the gas to energy portion of the facility. I asked the representative to give me a breakdown, which he did, but he also sent an amended BETE listing all of the gas to energy. I was trying to find where power generation was listed in the guidance documentation to send to him, but it just lists "A Public Utility".

Advise please!!

Kelly

On Tue, May 27, 2014 at 9:00 AM, Ledew, David P <David.P.Ledew@maine.gov> wrote:

David Ledew, Director  
Property Tax Division  
Maine Revenue Services

**INHABITANTS OF LEEDS vs. MAINE CRUSHED ROCK AND GRAVEL  
COMPANY.**

**SUPREME JUDICIAL COURT OF MAINE, ANDROSCOGGIN**

**March 8, 1928, Decided**

**PRIOR HISTORY:**

[\*\*1] On Exceptions. An action of debt for the collection of \$ 533 tax on personal property assessed against the defendant, a non-resident corporation.

Defendant corporation conducted a sand and gravel and stone crushing business in the town of Leeds, using in connection therewith, a steam shovel, locomotive, stone crushers and other chattels which were the personal property assessed under the word "machinery." Defendant contended that the property was not subject to taxation in the town of Leeds.

Hearing was had before the presiding justice of the Superior Court for the County of Androscoggin, who ruled that the action could not be maintained.

The plaintiff took exceptions to the rulings.

Exceptions overruled.

The case appears fully in the opinion.

**DISPOSITION:**

Exceptions overruled.

**HEADNOTES:**

**TAXATION. PERSONALTY. "PERSONAL PROPERTY EMPLOYED IN TRADE" AND "MACHINERY EMPLOYED IN ANY BRANCH OF MANUFACTURE," CONSTRUED. "LANDING PLACE" DEFINED.**

*Employment in trade under paragraph 1, Sec. 14, Chap. 10 R. S. means trade in the town where it is prepared for market. Where the evidence does not disclose any local market or any intent or expectation to sell locally and the things, when*

*prepared for market, are to be sold, not where prepared, but in the town where the owner's main business is located, the property is not "employed in trade" in the town where it is when prepared, and is not there taxable.*

*The chattels, if claimed to be a mill when taken together, cannot serve at the same time as property employed and as the place in which employed. The property which may be taxed under paragraph 1, Sec. 14, Chap. 10 R. S. is movable property wholly distinct from the "mill" or "landing place" occupied.*

*A landing place is a place where logs (and it may be other things) are collected and deposited for transportation or shipment from that place, whether it be by water or rail. The phrase connotes both collecting and depositing. Machinery used to prepare rock and sand for shipment cannot be said to be "collected and deposited" within the meaning of the Statute.*

*To make an article manufactured, the application of the labor must result in a new and different article with a distinctive name, character or use. Crushing, grinding and preparing rock, gravel and sand for market is not manufacturing, and machinery used for such purposes is not "employed in any branch of manufacture."*

In the instant case, no new article was produced. Raw material created by the process of nature was broken for use and sale into convenient sizes, which were raw material no less than when excavated, and, no labor having been expended in fashioning the pieces, than when they left the breaker. Such crushing does not constitute manufacturing in the ordinary sense.

*Held:*--the "machinery" was not taxable by Leeds under R. S. Chap. 10, Sec. 14, Par. 1 as "personal

property employed in trade--or in the mechanic arts" by an owner who occupied a "mill" or "landing place" in that town, nor was it taxable by Leeds under paragraph III, Sec. 14, as being "machinery employed in any branch of manufacture."

**COUNSEL:**

Tascus Atwood, for plaintiff.

Frederick J. Laughlin,

Harry Manser, for defendant.

**JUDGES:**

SITTING: WILSON, C. J., PHILBROOK, DUNN, BARNES, BASSETT, PATTANGALL, JJ.

**OPINIONBY:**

BASSETT

**OPINION:**

[\*52] [\*\*73] BASSETT, J. Action of debt by tax collector of the town of Leeds to collect a tax assessed on personal property described as "machinery" and employed by the defendant, a Maine corporation [\*\*\*2] located at and with its principal place of business at Portland, in its gravel and sand pit in the town of Leeds. Case comes up on exceptions to the ruling of the presiding justice that the action could not be maintained.

It is admitted that the usual statutory requirements for assessing a tax and bringing a suit were complied with. The only question is, was the property taxable in Leeds.

[\*53] The "machinery" included these chattels, a steam shovel, narrow gauge locomotive, two stone crushers, two conveyors, six dump carts, hoist and attachments, screen and attachments, dynamos and one Ford ton truck. The process of getting out sand and gravel is this. The material is excavated in the pit by the steam shovel, loaded into small yard cars, hauled to a hopper, from which it is taken up by a small car and dumped on a grating, where rocks exceeding two and one-half inches in size are projected to a crusher. This "oversize," as it is called, is there crushed to two and one-half inches and, upon an occasional order for stock smaller than that, there is recrushing to the smaller size. Not over twenty-five per cent of all the rock material excavated is crushed. The remainder passes [\*\*\*3] through the screen into bins, into which the crushed rock is also conveyed, and thence is passed into railroad cars of the Maine

Central Railroad on a spur track connecting with the main line and shipped to customers on orders received at the Portland [\*\*74] office. The sand excavated is screened, washed and finally loaded into Maine Central cars and shipped on similar orders to destination.

The general provision of the statute for the taxation of personal property is that it "shall be assessed to the owner in the town where he is an inhabitant on the first day of each April." R. S. 1916, Chap. 10, Sec. 13, as amended by Chap. 82 of the Public Laws of 1919.

Section 14, which follows, provides certain exceptions, among which are,

"I. All personal property employed in trade, in the erection of buildings or vessels, or in the mechanic arts, shall be taxed in the town where so employed on the first day of each April; provided, that the owner, his servant, subcontractor or agent, so employing it, occupies any store, storehouse, shop, mill, wharf, landing place or shipyard therein for the purpose of such employment."

"III. Machinery employed in any branch of manufacture, goods manufactured [\*\*\*4] or unmanufactured, and real estate belonging to any corporation, except when otherwise expressly provided, shall be assessed to such corporation in the town or place where they are situated or employed:"

[\*54] The plaintiff claimed that the chattels were taxable under paragraph III as "machinery employed in any branch of manufacture" and under paragraph I as "personal property employed in trade" by an owner who occupied a "landing place." The presiding justice ruled they were not taxable under III nor under I, "the assessment being specifically upon this machinery."

We think the chattels were not taxable under either paragraph.

Arguments of counsel and the ruling of the presiding justice were first and chiefly concerned to determine whether the property came within the description of paragraph III and secondarily within the description of paragraph I.

This case does not raise the question, which one of two towns has the right to tax under one or the other paragraph, *Boothbay v. duPont deNemours Company*, 109 Me. 236, 83 A. 663, but whether a given town had any right to tax at all under either paragraph. Two towns might contend for the right to tax property [\*\*\*5] which might be

within the description of more than one paragraph. The proper way to determine under which paragraph of the enumerated exceptions property is to be taxed was set forth by the court in *Boothbay v. duPont deNemours Company*, supra, as follows. "It was the intention of the Legislature to provide by the enumerated cases in Section 13 (Section 14 of present statutes) for the taxation of personal property not taxable under Section 12 (Section 13 of present statutes). To determine under which paragraph of the enumerated cases in Section 13 property shall be taxed, it should be ascertained if the property, its condition, and situation are such as are described in paragraph I of said Section. If not, are they such as are described in paragraph II, and so on until the property is described in one of the paragraphs of Section 13. When it is included within one of the paragraphs of Section 13, it is taxable as therein stated, and all similar property similarly situated must be taxed under that paragraph, and cannot be taxed under any other. It being the intention of the Legislature by each paragraph to provide for the taxation of the property therein mentioned, it [\*\*\*6] follows that when the property is included within the cases mentioned in one of the paragraphs, it shall be taxed under that section and cannot be taxed under any other."

We therefore turn first to paragraph I.

[\*55] The word "machinery" which is expressly found in paragraph III does not determine that the property was assessed under that paragraph. Machinery may be actually articles of "trade" of the owner. It was "personal property" as appears here.

But the chattels were not "employed in trade." The property taxed here was not the stone and gravel which was sold but machinery for putting it into condition to be sold. If it could be said that the machinery thereby was "employed in trade," it would not be, under paragraph I, as regards taxation, in any different position from the sand and gravel. Our court has repeatedly held, *New Limerick v. Watson*, 98 Me. 379, 57 A. 79; *McCann v. Minot*, 107 Me. 393, 78 A. 465; *Morton v. Wilson*, 115 Me. 70; *Lumber Company v. Machias*, 122 Me. 304, 119 A. 805, that employment in trade under this paragraph means trade in the town where it is when prepared for market. Where the [\*\*\*7] evidence, as here, does not disclose any local market or any intent or expectation to sell locally and that the things, when prepared for market, are to be sold, not where prepared but in the town where the owner's main business is located, the property is not "employed in trade" in the town where it is when prepared.

It is not necessary to decide whether these chattels were employed "in the mechanic arts" for, if they were, the owner did not occupy any "mill" or "landing place" in Leeds within the meaning of the statute. If it be claimed that the chattels, some or all of them taken together, were a "mill," they cannot "at the same time serve as personal property employed and as the building or place in which it is employed." "The personal property which may or may not be subject of taxation under the exception is movable property wholly distinct from the store, shop, mill, wharf, landing place or shipyard' which by virtue of the proviso must be occupied." *Norway v. Willis*, 105 Me. 54, 72 A. 733.

Nor was there a "landing place" within the meaning of the statute. The words were defined in *McCann v. Minot*, supra, a log case. [\*\*75] "A landing [\*\*\*8] place is a place where logs (and it may be other things) are collected and deposited for transportation or shipment from that place, whether it be by water or rail." In *Lumber Company v. Machias*, supra, also a log case, use of the word "include" (p. 307) would imply that landing place includes logs but is not confined to them.

[\*56] But the machinery was not the things "collected and deposited" in the alleged landing place here. The rock and sand were what corresponded to the logs which, in the cases cited, were the property in the landing place and taxed. The alleged landing place was a part of defendant's premises, the so-called pit, where the work went on and where the sand and gravel at the completion of the preparation were deposited. They were landed in that remote sense in which the finished product of any process conducted in a given place is there deposited pending further movement in its disposition. They were deposited but not collected in the meaning of the statute which for landing place connotes both collecting and depositing.

We therefore decide this machinery could not be taxed under paragraph I and turn to paragraph III.

There was no contention [\*\*\*9] that the word "machinery" did not cover all of the different chattels, and it is not necessary therefore to raise such question. For this decision, we assume it does include all. But we do not think that the machinery was "employed in any branch of manufacture." The meaning of the word "manufacture" has been before the courts in various applications including provisions of statutes for taxation. This line of distinction has been drawn which we think to be correct. Application of labor to an article either by

hand or mechanism does not make the article necessarily a manufactured article. To make an article manufactured, the application of the labor must result in a new and different article with a distinctive name, character or use.

It was therefore held that a corporation quarrying, crushing, preparing, and marketing limestone in different sizes was not a "manufacturing" corporation. "No new article was produced by the relator. It simply took raw material which had been created by the process of nature and broke it into convenient sizes for use and sale. The reduced sizes were the raw material no less than when blasted in rock from the cliff. The relator expended no labor in fashioning [\*\*\*10] the pieces. When sold they were in precisely the conditions in which they left the breaker. Had the existence of the stone been due to the agency of the relator, or an article have been created by its labor or the addition of other substances producing an article having a different character and use, a very different question [\*57] would be presented." *People ex rel. Tompkins Cove Stone Co. v. Saxe et al*, 162 N.Y.S. 408, 176 A.D. 1, reaffirmed on appeal, 221 N. Y., 601.

So it was held a corporation engaged in quarrying, crushing, preparing, and marketing stone by breaking it into pieces and sorting by screens was not engaged in manufacturing. "The rock still remains rock. The only difference is in the size of the portions and in this natural condition without the application of any art or process to change the form or appearance of the broken pieces, the same are sold in the market." *Commonwealth v. John T. Dyer Quarry Co.*, 95 A. 797 (Pa.).

So crushing and grinding rock into sand of specified grades of fineness sometimes colored by admixture of clay and used for molding in steel trade and for concrete in building was held not

"manufacturing. [\*\*\*11] " "The pieces are sold as they come from the crusher without any attempt to remove the irregularities of the edges or make the pieces of uniform shape. ... The fact that clay is sometimes added to the sand when colored silica is desired does not in our opinion change the situation." *Commonwealth v. Welsh Mountain Mining, etc., Co.*, 108 A. 722.

So it was held that cleaning off the outer layer of shells by acid and grinding off the second layer by an emery wheel so as to expose the inner layer and all intended to be sold as shells for ornament was not a "manufacture of shells." "They were still shells. They had not been manufactured into a new and different article having a distinctive name, character or use from that of a shell." *Hartranft v. Wiegmann*, 121 U.S. 609, 30 L. Ed. 1012, 7 S. Ct. 1240.

And so machinery employed in the business of quarrying and breaking stone, to be used in macadamizing roads and for similar purposes was held not to be taxable as being "employed in manufacturing." "Quarrying and dressing granite could hardly be said to be manufacturing it, though molding clay into different sizes and shapes and then burning it fairly may [\*\*\*12] be said to be manufacturing brick. Still less could simply crushing granite into smaller and smaller pieces be said to constitute manufacturing, as that word is ordinarily used, though there is a remote sense in which it may be true." *Wellington v. Belmont*, 164 Mass. 142, 41 N.E. 62. This case is quite on all fours with the instant case.

[\*58] We therefore decide this machinery could not be taxed under paragraph III.

The exceptions to the ruling of the presiding justice were not well taken. The entry must therefore be *Exceptions overruled*.

Maine Secretary of State



**2014 Annual Report  
Electronic Filing Acknowledgment**

For Business Corporations on file as of December 31, 2013

*Corporate  
Filing w/State*

**Charter Number:** 19380011 D  
**DCN Number:** 2146019000922  
**Legal Name:** HUGHES BROS. INC.

**Clerk's Name and Address:**

EDMOND J. BEAROR  
84 HARLOW ST  
BANGOR, ME 04401

**Brief statement of the character of the business:**

READY-MIX CONCRETE

**Name and Address of Officers:**

TREASURER  
PETER R. HUGHES  
719 MAIN ROAD NORTH, HAMPDEN, ME 04444

PRESIDENT  
PETER R. HUGHES  
719 MAIN ROAD NORTH, HAMPDEN, ME 04444

VICE PRESIDENT  
EDWARD J. HUGHES III  
719 MAIN ROAD NORTH, HAMPDEN, ME 04444

**Name and Address of Director:**

PETER R. HUGHES



Kelly Karter &lt;assessor@hampdenmaine.gov&gt;

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## Gravel Pits and Equipment

2 messages

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**Kelly Karter** <assessor@hampdenmaine.gov>

Tue, Jul 1, 2014 at 10:34 AM

To: mdarcangelo@gorham.me.us

Hi Mike,

I have an owner of a construction/gravel company in Hampden. They have established pits in other locations. I noticed that you have Shaw Brothers In Gorham and they also have a number of pits in other towns. I believe that the home office location should be reporting all of their mining equipment to me and not to the other municipalities that they are located in.

Can you verify that that is the case with Gorham? I did check for valuations of personal property in the other towns listed for Shaw Brothers and did not find any.

Any help you can provide would be greatly appreciated. I did get the 1924 (?) case from David Ledew and reviewed the Assessor's Manual, however I am trying to dot my i's and cross my t's! The owner of this company is telling me I am the only one in the State that is doing/trying to do this.

Thanks,  
Kelly

--  
Kelly J. Karter, CMA  
Hampden Assessor  
106 Western Avenue  
Hampden, Maine 04444  
Tel: 207-862-4500  
Fax: 207-862-5067

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**Mike Darcangelo** <mdarcangelo@gorham.me.us>

Tue, Jul 1, 2014 at 2:44 PM

To: assessor@hampdenmaine.gov

Hi Kelly,

I just verified with Shaw Bros. that they do in fact report all their equipment in various gravel pits in other communities to Gorham, where their home office is based. Hope this helps!!

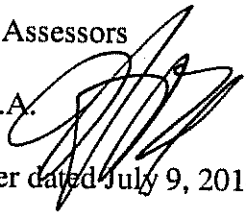
Mike D'Arcangelo, CMA  
Assessor, Town of Gorham  
207-222-1600





Winterport Board of Assessors  
P.O.Box 559  
Winterport, ME 04496  
207-223-5055

July 9, 2014

To: Winterport Board of Assessors  
From: H.R.Dickey III, C.M.A.   
Subject: Hughes Brothers letter dated July 9, 2014

On or about July 2, 2014 I received a phone call from Kelley Carter, the Town of Hampden Assessor, saying she was having difficulty with Hughes Brothers Inc. regarding their personal property.

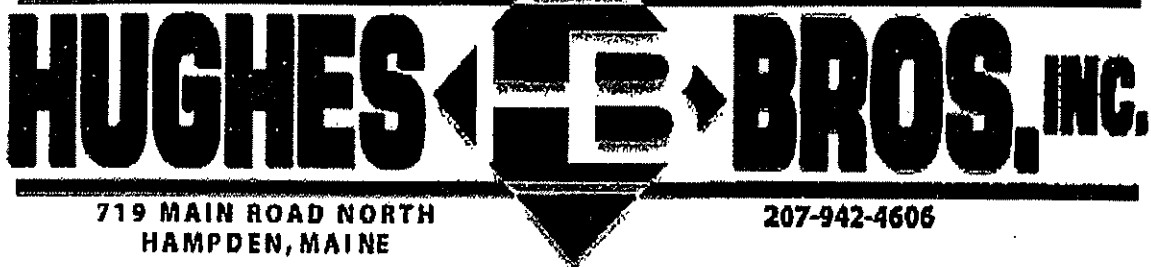
Kelley said Hughes Brothers claimed their Winterport operation was independent of the Hampden operation and what property, both personal and real, was taxable in Winterport. Kelley said to me that Janet Hughes stated to her that Hughes Brothers had a separate office in Winterport as well as equipment that was permanently attached to the gravel pit parcel.

I told Kelley that I did not know of any office in Winterport but would, because we have no permit system in Winterport, go to the gravel pit to see if an office had been constructed in or near the gravel pit area.

I drove into the pit, never leaving my pickup, and discovered three sheds in the floor of the gravel pit. I returned to the Winterport Town Office and called Kelley saying I found three sheds but nothing that even came close to an office. Kelley asked me what personal property I saw in the pit. I recalled from memory that I noticed three or four screening systems and conveyers in the shed complex area, two or three front end loaders, a grader, and a large wheeled dump truck.

On July 7, 2014 Janet Hughes called me to complain about my collaboration with Hampden. We had a rather heated discussion exchanging our opinions of personal property. Janet complained that I did not call her office in Hampden before entering the pit area. At that point I said at least three times that in future I would be sure to call the Hampden Office of Hughes Brothers before entering the pit area. Janet then stated she be coming to the next Board meeting on July 9, 2014.

I subsequently went back to the pit entrance and took a picture of their signage. No where on the sign does it say visitors must call the Hampden Office before entering. I have personal knowledge of contractors visiting the pit without being accompanied by Hughes Brothers personal. The sign only asks that visitors follow mine safety rules which I did. I did follow all the safety rules stated on the sign as I never left my vehicle.



Phillip Pitula  
 Town of Winterport  
 20 Summer Street  
 Winterport, Maine

July 9, 2014

RE: Tax Assessor Visit

Dear Phil:

As requested, I am following up on our phone conversation from last week. Hughes is disappointed in the approach by the Town to assess our property on the Coles Corner Road in Winterport. Herb Dickey entered into our gravel pit property without notice and ignoring state and federal health and safety rules and regulations. Signage at the entrance to the facility identifies the need to call our office prior to entering due to state and federal Mine Safety Regulations (MSHA).

We would be happy to accompany your assessor to our facility, upon notice. It is very important that the Town abide by all state and federal safety regulations. We respectfully request that the Town notify us prior to entering our facility, as required by the MSHA regulations.

In addition, Mr Dickey is reporting to the Town of Hampden information regarding his assessment of personal property most specifically the processing facility which has been in place since the early 80's. Mr. Dickey feels that the Town of Hampden should be taxing the facility as personal property, and has coordinated the information with the Town of Hampden. Hughes Bros. respectfully disagrees as the Winterport operation has remained a fully independently operating facility for over 30 years with its own representative residence in Winterport. Our interpretation is supported based on the guidance of the Maine Revenue Services.

We asked that we be placed on the agenda of the next Assessor's meeting on July 9 so we may understand the Assessors Board interpretation of Personal Property Law. However, I have since discussed the goals for Personal Property Tax in Winterport with Robert Reynolds. I also understand that our property has been flagged as needing prior notice before entering. I appreciate the time taken by Mr. Reynolds to discuss our concerns, and unless the Town has further input to our dispute with the Town of Hampden, we see no need to take up your time in meetings tonight. Thank you for your time and consideration.

Sincerely,

HUGHES BROS., INC.

*Janet Hughes*  
 Janet Hughes

cc: Board of Assessors



Kelly Karter <assessor@hampdenmaine.gov>

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## Winterport

1 message

---

**Kelly Karter** <assessor@hampdenmaine.gov>  
To: Janet Hughes <jhughes@hughesbrosinc.com>

Thu, Jul 10, 2014 at 1:12 PM

Hi Janet,

I am requesting entrance into your pit operation in Winterport to help determine the taxable status. Please contact me regarding this request and a possible date and time.

Sincerely,  
Kelly

--

Kelly J. Karter, CMA  
Hampden Assessor  
106 Western Avenue  
Hampden, Maine 04444  
Tel: 207-862-4500  
Fax: 207-862-5067



Kelly Karter <assessor@hampdenmaine.gov>

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**RE: MRS**

1 message

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**Kelly Karter** <assessor@hampdenmaine.gov>  
To: Janet Hughes <jhughes@hughesbrosinc.com>

Wed, Jul 16, 2014 at 3:30 PM

Hi Janet,

I did e-mail you twice regarding a visit to the Winterport Pit, but have not heard back from you. I also left you a message today as Ivan told me you were expecting a call.

I did speak with Dave Ledew and he asked me if there was, in fact, an office at the Winterport location. I am, again, requesting a site visit.

I look forward to hearing from you.

Kelly

--

Kelly J. Karter, CMA  
Hampden Assessor  
106 Western Avenue  
Hampden, Maine 04444  
Tel: 207-862-4500  
Fax: 207-862-5067



Kelly Karter <assessor@hampdenmaine.gov>

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## Town's request for personal property tax on equipment at Winterport facility

6 messages

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Janet Hughes <jhughes@hughesbrosinc.com>

Fri, Jul 18, 2014 at 9:27 AM

To: Kelly Karter <assessor@hampdenmaine.gov>

Cc: Susan Lessard <manager@hampdenmaine.gov>, imcpike@hampdenmaine.gov, Dean Bennett <economicdevelopment@hampdenmaine.gov>, wshakespeare@hampdenmaine.gov, Peter Hughes <phughes@hughesbrosinc.com>, "E. Hughes" <ehughes@hughesbrosinc.com>

Under Federal Mine Safety and Health Administration (MSHA) regulations, you cannot enter our pit, without proper training as prescribed by MSHA regulations. Any entrance will be a willful violation of federal regulation by the Town of Hampden, and must be reported by the "Operator" as prescribed by the Federal Mine Safety and Health Administration. We already have one recordable instance by the Town of Winterport, as part of your efforts to understand our facility instead of talking directly to us, and taking a legal and safe manner to inspect facilities. These federal regulations need to be taken seriously....

The Winterport Pit is located on the Coles Corner Road. There is a maintenance facility located along the road, which is open year round. There are four employees at this facility who report directly to the manager of the facility. The facility is also open year round. Our processing facility is not portable and has been in the same location for 30 years, tied to concrete foundations and steel and concrete structures. The office is manned nearly full time and also includes the control systems, sales office, training, and misc. administration. There are two other buildings adjacent to and included as part of the processing facilities. All three buildings can be viewed by Google Earth, in addition to the maintenance facility at the road area. We could not transport and/or haul the facility or portions thereof. They are not portable. I have included pictures so you may see such.

I am affiliated with three other similar facilities not owned by Hughes Bros. in three separate Towns. All of which the personal property tax is paid in the respective town. We are not like contractors who own portable plants that are hauled from place to place, such as the screener we pay personal property tax to you currently. We are suppliers with intricate and extensive systems.

At the last meeting with you and Tom Russell a few weeks ago, we explained our position and the position of the director of Maine Revenue Services. You were going to get back to us after you and Tom Russell's conversation with them. We are of the same stance as Maine Revenue Service, personal property tax at the Winterport facility belongs in the Town of Winterport. This is our place of residence for this facility.

The Town should use legal methods as it feel fits. Then and only then, will we shut down our facilities for you to conduct your investigation.

Sorry but Peter and Edward are very upset by this, and are moving forward with other alternatives so that our investments in other Town's are protected. They plan to move 50% of the fleet with them in excise tax.

I'd prefer to settle this cause I love this Town, but this just isn't working in our expansions moving forward. We have to have something to offer other Town's when we use their roads, their public services, emergency services, etc.

My thought is that the Town is so willing to sit and talk to new business moving into Town, with an entire team of people, but of very little interest of a business who has been here 80 years. I know its not your intent, but we all know that personal property tax is such a gray area, you have every legal ability to support us, and you certainly may have every legal ability to chase us for additional tax in another Town based on tax law that is about as clear as mud.

I apologize for the stance but I have done all I can do internally here.

Janet

**From:** Kelly Karter [mailto:assessor@hampdenmaine.gov]  
**Sent:** Thursday, July 10, 2014 1:13 PM  
**To:** Janet Hughes  
**Subject:** Winterport

Hi Janet,

I am requesting entrance into your pit operation in Winterport to help determine the taxable status. Please contact me regarding this request and a possible date and time.

Sincerely,  
Kelly

--

Kelly J. Karter, CMA

Hampden Assessor

106 Western Avenue

Hampden, Maine 04444

Tel: 207-862-4500

Fax: 207-862-5067

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**5 attachments**



Kelly Karter <assessor@hampdenmaine.gov>

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## Hughes' Pit

1 message

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Kelly Karter <assessor@hampdenmaine.gov>

Thu, Aug 28, 2014 at 12:31 PM

To: "david.p.ledew@maine.gov" <david.p.ledew@maine.gov>

Hi Dave,

The town manager has asked me if it would be possible for you to meet with the Hughes me and her to discuss the taxation of their equipment in Winterport. I requested access in writing and was denied in writing to see if there is in fact an office there. Herb Dickey in Winterport did go to the site and advised me that he did not see an office and reported what he did see from outside of the gates. I have taxed them based on what information I could gather through pictures, his information and their website.

Let me know.

Kelly Karter

Sent from my iPhone

Sent from my iPhone



Kelly Karter <assessor@hampdenmaine.gov>

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## Personal Property Tax in Hampden

2 messages

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**Janet Hughes** <jhughes@hughesbrosinc.com>  
To: Kelly Karter <assessor@hampdenmaine.gov>

Wed, Sep 3, 2014 at 10:50 AM

Kelly,

I am reviewing the personal property tax assessment for equipment in Hampden.

Does the BETE Program exempt qualifying personal property (such as excavators and bulldozers) placed in service after April 1, 2007?

Janet Hughes

---

**Kelly Karter** <assessor@hampdenmaine.gov>  
To: Janet Hughes <jhughes@hughesbrosinc.com>

Wed, Sep 3, 2014 at 11:03 AM

It does if a BETE application is submitted. Other equipment could qualify for BETR if it is identified and reported. The personal property form does explain both programs.

Sincerely,  
Kelly

Sent from my iPhone  
[Quoted text hidden]





Kelly Karter <assessor@hampdenmaine.gov>

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## 2014 BETR

2 messages

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**Janet Hughes** <jhughes@hughesbrosinc.com>  
To: Kelly Karter <assessor@hampdenmaine.gov>

Wed, Dec 17, 2014 at 9:00 AM

Last year you sent us the BETR Substitute Form. Can you send me one for 2014, and I will follow up and send the BETR Form to you?

Thank you

Janet Hughes

---

**Kelly Karter** <assessor@hampdenmaine.gov>  
To: Janet Hughes <jhughes@hughesbrosinc.com>

Wed, Dec 17, 2014 at 10:37 AM

Hi Janet,

Attached is your BETR form. Let me know if it is not the correct one.

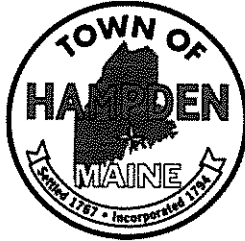
Thanks,  
Kelly

Kelly J. Karter, CMA  
Hampden Assessor  
106 Western Avenue  
Hampden, Maine 04444  
Tel: 207-862-4500  
Fax: 207-862-5067  
[Quoted text hidden]

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141217100338.PDF  
42K

Town of Hampden  
106 Western Avenue  
Hampden, Maine 04444



Phone: (207) 862-3034  
Fax: (207) 862-5067  
email: [assessor@hampdenmaine.gov](mailto:assessor@hampdenmaine.gov)

April 2, 2015

Janet Hughes  
Hughes Brothers, Inc.  
719 Main Road North  
Hampden, Maine 04444

Dear Mrs. Hughes,

I sent an e-mail to David Ledew, Maine Revenue Services on March 24<sup>th</sup> after Susan Lessard received your e-mail inquiring about the personal property report and the items you are contesting. Your e-mail stated that you had an audit of sales tax by Maine Revenue. That is a division separate from Property Tax, like Income Tax and Sales Tax are two different divisions. All of the divisions above, work under the "umbrella" of Maine Revenue Services, but they are all overseers of one particular portion of the revenue stream.

Mr. Ledew called me on March 30<sup>th</sup> to respond to my inquiry (I had attached your e-mail to Susan). This is the second time I have called to inquire about information you may have gotten and meetings that you may have had with Maine Revenue Property Tax Division and this is the second time I have been told that there has been no meeting nor has anyone from the Property Tax Division reviewed or visited your pit in Winterport. In fact, I have been told that it is a determination that needs to be made at this level. I have not been allowed access to the pit to inspect how the property is situated. You state that it is permanently affixed to the ground however it cannot be determined from the photos you submitted to me along with your e-mail of July 18<sup>th</sup>, 2014.

If the equipment is permanently affixed to the ground, it would be considered Real Estate and not personal property. The motorized equipment, such as the loader and trucks would be taxable as personal property in Hampden but the attached equipment would not.

It may be best for us to try and set up an appointment with Herb Dickey, Winterport Assessor and review the property to verify what is and is not affixed to the ground. If this is a route you would like to pursue, please call me and I will try to arrange things on this end.

I look forward to your response.

Sincerely,

  
Kelly J. Karter, CMA

CERTIFICATE OF ABATEMENT

36 M.R.S.A. Section 841

I, the undersigned assessor of the Town of Hampden, hereby certify to Cheryl M. Johnson, Tax Collector, that an abatement of FY 2015 property taxes which were committed to you on August 20, 2014 has been granted by me as follows:

Property Owner Hughes Brothers Inc.

Property Description Personal Property

Property Type: Real                      Personal xxx

Amount of abatement granted: \$10,654.00

Reason: Property is permanently affixed to the land.

You are hereby discharged from any further obligation to collect the amount abated.

Signed: *Kenneth J. Karter* Date: 04/23/2015

No: 2014/2015 #13

Acct: PP 96

Town of Hampden  
106 Western Avenue  
Hampden, Maine 04444



Phone: (207) 862-3034  
Fax: (207) 862-5067  
email:assessor@hampdenmaine.gov

April 23, 2015

Peter & Janet Hughes  
Hughes Brothers Inc.  
719 Main Road North  
Hampden, Maine 04444

RE: Winterport Pit Personal Property

Dear Mr. & Mrs. Hughes,

As I have requested, for over a year, I was allowed entrance into your pit in Winterport on April 14, 2015. Ed was very informative and explained the process to me and how it all worked. There were items of personal property (mining) that were undeniably affixed to the ground. As a result of that inspection I have issued an abatement on your personal property taxes of \$10,654.00. There is still a balance remaining that consists of the front loaders, portable screen and the Caterpillar dump truck with the oversized tires.

I recall you (Janet) saying that you were described by the State as a "manufacturing facility" not a "mining facility". If you can provide me with that documentation, I will review the remaining items.

If you have any questions, please do not hesitate to call me. Again, thank you for the tour of the facility.

Sincerely,

A handwritten signature in cursive script that reads "Kelly J. Karter".

Kelly J. Karter, CMA  
Hampden Assessor

Town of Hampden  
106 Western Avenue  
Hampden, Maine 04444



Phone: (207) 862-3034  
Fax: (207) 862-5067  
email: [assessor@hampdenmaine.gov](mailto:assessor@hampdenmaine.gov)

April 23, 2015

~~Peter & Janet Hughes~~  
Hughes Brothers Inc.  
719 Main Road North  
Hampden, Maine 04444

RE: Winterport Pit Personal Property

Dear ~~Mr. & Mrs. Hughes,~~ *Ed*

As I have requested, for over a year, I was allowed entrance into your pit in Winterport on April 14, 2015. Ed was very informative and explained the process to me and how it all worked. There were items of personal property (mining) that were undeniably affixed to the ground. As a result of that inspection I have issued an abatement on your personal property taxes of \$10,654.00. There is still a balance remaining that consists of the front loaders, portable screen and the Caterpillar dump truck with the oversized tires.

I recall you (Janet) saying that you were described by the State as a "manufacturing facility" not a "mining facility". If you can provide me with that documentation, I will review the remaining items.

If you have any questions, please do not hesitate to call me. Again, thank you for the tour of the facility.

Sincerely,

*Kelly J. Karter*

Kelly J. Karter, CMA  
Hampden Assessor

*Thank you for taking the  
time to tour the pit  
with me - I appreciate  
it.*

*Kelly*



Kelly Karter <assessor@hampdenmaine.gov>

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## Hughes Brothers

2 messages

---

Kelly Karter <assessor@hampdenmaine.gov>

Thu, Jul 2, 2015 at 9:20 AM

To: david.p.ledew@maine.gov

Hi David,

I have attached a letter I just received today from Hughes Bros. regarding only the motorized equipment (loaders, portable screen, and unregistered dump truck). I was allowed entrance to the pit in April of this year, after being refused for a year. I abated all of the equipment that was obviously "permanently" affixed to the ground.

My concern is the request for the council to set tax policy. Does your office have an opinion on that? I have forwarded this onto the Town Attorney for his advice as well.

Have a great 4th!

Kelly

Kelly J. Karter, CMA  
Hampden Assessor  
106 Western Avenue  
Hampden, Maine 04444  
Tel: 207-862-4500  
Fax: 207-862-5067

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**DOC075.pdf**  
81K

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Ledew, David P <David.P.Ledew@maine.gov>

Thu, Jul 2, 2015 at 11:16 AM

To: Kelly Karter <assessor@hampdenmaine.gov>

They cannot tell you your job, however after a year and up to three, the municipal officers can abate for what they may feel is an illegal assessment.

**From:** Kelly Karter [mailto:assessor@hampdenmaine.gov]

**Sent:** Thursday, July 02, 2015 9:21 AM

**To:** Ledew, David P

**Subject:** Hughes Brothers

[Quoted text hidden]

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2 attachments

**Town meeting control.pdf**  
299K



**Young vs. Johnson 1965.doc**

48K

## STATE OF MAINE

Inter-Departmental Memorandum Date December 9, 1980To George Mayo, DirectorDept. Property TaxFrom James A. Buckley, Assistant JABDept. Attorney GeneralSubject: Town Meeting's Control Over Assessors

You posed the question of whether a town meeting can tell the assessors how they will assess. I have concluded that they cannot.

The Supreme Judicial Court has frequently referred to the unique position as public officers which assessors have historically occupied. In Dillon v. Johnson, 322 A.2d 322 (1974), the Court said:

[Assessors] have certain responsibilities which are unique and distinct from those of other elected officials. Since their duties are defined by statute [chapters 102 and 105 of Title 36] they are not subject to the direction and control of the municipalities in which they function. Young v. Johnson, 161 Me. 64, 207 A.2d 392 (1965).

Section 328 does not change the duties imposed on and the authority granted to the assessors, nor was it intended by § 328 to change the principle that the assessors are not subject to the direction and control of the municipality. The word "municipality" as used in section 328 is meant to refer to all appropriate municipal officials, whether assessors, selectmen or a town meeting. The section is designed to ensure that the municipalities' independence and invention is not unduly restrained by the Bureau of Taxation in enforcing the assessing standards. The word "municipalities" is used instead of "assessors" because some of the functions and procedures listed could be administered or determined by other officials, e.g. budgets, office hours. Although the section recognizes other officials may determine the budget or hours of the assessors office, it would be incorrect, however, to conclude that, therefore, section 328 empowers the municipality, distinct from the assessors, to dictate assessing methods to the assessors. The well-established principle referred to in Dillon v. Johnson is still the law.

You also asked whether section 2.01 of the Orrington Charter empowers the town meeting to so control the assessors. That section authorizes town meeting action only on matters that fall within the jurisdiction of the town. Assessing property values is a matter within the jurisdiction of the assessors, not the town; therefore, section 2.01 does not authorize the town meeting to control the assessors. Even if the section did so authorize, it would be of no effect since the assessor's independence of control by the municipality is dictated by the constitution and laws of Maine.

JAB:cc



**KENDALL A. YOUNG, PETITIONER vs . ERNEST H. JOHNSON, STATE TAX ASSESSOR  
ROSCOE B. JACKSON MEMORIAL LABORATORY, INTERVENOR MOUNT DESERT ISLAND  
BIOLOGICAL LABORATORY, INTERVENOR**

**Maine Supreme Judicial Court**

**161 Me. 64; 207 A.2d 392; 1965 Me.**

**February 26, 1965**

**CASE SUMMARY**

**PROCEDURAL POSTURE:** Plaintiff taxpayer sought review of the decision of a Maine trial court, which denied the majority of the taxpayer's request to compel defendant state tax assessor to place the intervenor laboratories' property on the tax assessment rolls of a municipality in the taxpayer's mandamus action against the assessor.

**OVERVIEW:** The taxpayer filed a mandamus action against the assessor to compel the assessor to place the property of the laboratories on the tax assessment rolls of a municipality. The trial court denied the majority of the taxpayer's request, but order that a few of the laboratories' properties be placed on the assessment rolls. On appeal, the court dismissed the appeal and directed that both the peremptory and alternative writs quashed. The court held that mandamus was the appropriate method of challenging the decision of the assessor because there was no statutory provision that provided for an appeal of the assessor's decision. However, the court concluded that although Me. Rev. Stat. Ann. ch. 16 § 72 provides the assessor with the discretion to order a municipality to place a property on its assessment rolls, the assessor could not be compelled by mandamus to take such action.

**OUTCOME:** The court dismissed the taxpayer's appeal of the trial court's denial of the taxpayer's request to compel defendant state tax assessor to place the intervenor laboratories' property on the tax assessment rolls of a municipality and directed that both the peremptory and alternative writs quashed.

**COUNSEL:**

[\*\*1]

*Orman G. Twitchell* , for Petitioner. *Ralph W. Farris, Asst. Atty. Gen.* , for State Tax Assessor.

*Mitchell and Ballou* , by *James E. Mitchell* , for Jackson Memorial Lab.

*Edwin R. Smith*, for Mount Desert Island Biological Laboratory.

**JUDGES:**

SITTING: WILLIAMSON, C.J., TAPLEY, WEBBER, SULLIVAN, SIDDALL, MARDEN, JJ.

**OPINIONBY:**

SIDDALL

**OPINION:**

[\*\*393] [\*66] SIDDALL, J. This is a petition for mandamus brought by the plaintiff, a resident and taxpayer of the Town of Bar Harbor, hereafter called the Appellant, against the State Tax Assessor, hereafter called the Assessor. The complaint, as amended, seeks to compel the Assessor to cause to be placed upon the assessment rolls for taxation at their just value, certain real estate and personal property of the Roscoe B. Jackson Memorial Laboratory, hereafter called the Memorial Laboratory, and of the Mt. Desert Island Biological Laboratory, hereafter called the Biological Laboratory. The Memorial Laboratory and the Biological Laboratories each filed a petition for leave to participate in the action in such manner as the court might direct, and was ordered to show cause against the issuance of the writ and granted leave [\*\*2] to make a return to the writ. An alternative writ of mandamus was issued by the

court ordering the Assessor to cause to be placed upon the assessment rolls for the Town of Bar Harbor the said real estate and personal property. The Assessor, as well as the Laboratories, filed an answer thereto.

The assessor filed a motion to dismiss the alternative writ on the grounds that (1) the petition and alternative writ, as amended, fails to show any legal duty on the part of the Assessor that he had not already performed, (2) the [\*67] statute involved is discretionary on the part of the Assessor, (3) mandamus is no longer available for review of administrative action. (R. 80, B1 R.C.P.), (4) said alternative writ upon its face shows that all legal duties imposed [\*\*394] upon the Assessor by R.S., 1954, Chap. 16, Sec. 68 and 72 have been fully complied with, (5) that the alternative writ fails to allege sufficient facts to show that the Assessor has the ability to perform the commands of the alternative writ. The issues raised in the motion to dismiss were disposed of in the judgment rendered by the court below.

The court, after hearing, found the great bulk of the real and [\*\*\*3] personal properties of the Laboratories to be taxexempt, and directed the Assessor to cause certain other properties to be placed upon the assessment rolls for taxation. From this decision an appeal was taken by the Appellant.

In his petition the Appellant sets forth the duties of the Assessor as they are contained in R.S., 1954, Chap. 16, Sec. 68, as amended, and in Sec. 72 of the same chapter. We quote [HN1] the pertinent parts of these sections as follows:

"The state Tax assessors 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." R.S., 1954, Chap. 16, Sec. 68, as amended. [HN2]

"The state tax assessor shall, at his own instance or on complaint made to him, diligently investigate all cases of concealment of property from taxation, of under valuation and of failure to assess property liable to taxation. He shall bring to the attention of town assessors all such cases in their respective towns. He shall direct [\*\*\*4] proceedings, actions, and prosecutions to be instituted to enforce all laws relating to the assessment and [\*68] taxation of property and to the liability of individuals, public officers and officers and agents of corporations for failure or negligence to comply with the provisions of the laws governing the assessment or taxation of

property, and the attorney general and county attorneys, upon the written request of the state tax assessor, shall institute such legal proceedings as may be necessary to carry out the provisions of this chapter. The state tax assessor shall have power to order the reassessment of any or all real and personal property, or either in any town wherein his judgment such reassessment is advisable or necessary to the end that all classes of property in such town shall be assessed in compliance with the law. Neglect or failure to comply with such orders on the part of any assessor or other official shall be deemed willful neglect of duty and he shall be subject to the penalties provided by law in such cases."

R.S., 1954, Chap. 16, Sec. 72.

The Assessor contends that mandamus does not lie in this case because the Appellant has an adequate remedy for [\*\*\*5] review by filing a complaint with the court under the provisions of Rule 80B MRCP. Under Rule 80B (a) MRCP, when a statute provides for review by the Superior Court of any action by a government agency, etc., whether by appeal or otherwise, or when any judicial review of such action has theretofore been available by extraordinary writ, proceedings for such review shall be instituted by complaint. We agree with the conclusions of the justice below, that this rule, supplemented by Rule 81, (b) (1) is not applicable to the administrative action taken in this case, and that mandamus is the proper remedy provided that the requirements of such a writ are [HN3] met. R.S., 1954, Chap. 16, Sec. 72 provides that the Assessor shall, at his own instance or on complaint made to him, investigate all cases of failure to assess property liable to taxation, and requires that the Assessor diligently investigate all such cases and bring [\*69] them to the attention of the local assessors. The Assessor in the instant case made an investigation, made findings, and notified the local assessors and the complainant. The statute [\*\*395] does not provide for an appeal from the decision of the Assessor [\*\*\*6] and a judicial review of that decision by extraordinary writ has never been available to a complainant. Our rules, undoubtedly, in many cases, require proceedings to be initiated by complaint, instead of by a petition for mandamus. The present case is not one of those cases. We consider the petition in this case to be a petition for mandamus brought by the Appellant to compel the Assessor to perform a duty which the Appellant claims the Assessor was obliged to perform, to wit: to cause certain property to be placed upon the assessment rolls of the Town

of Bar Harbor. The proceedings are governed by the technical rules of law relating to mandamus.

The writ of mandamus is of ancient origin. [HN4] Although the writ is authorized by R.S., 1954, Chap. 129, Sec. 17, as amended, it is governed by the rules of common law. *Weeks v. Smith, et al.*, 81 Me. 538, 544. Mandamus is an extraordinary remedy. The writ is one requiring the doing of some specific duty, imposed by law, which the applicant, otherwise without remedy, is entitled to have performed. *Rogers v. Selectmen of Brunswick*, 135 Me. 117, 119.

[HN5] Mandamus is designed to compel action and not to control decision. [\*\*\*7] The writ is granted in the sound discretion of the court. It is not a writ of right. *Chequinn Corporation v. Mullen, et al.*, 159 Me. 375, 377. If the officers are required to act in a judicial or deliberative capacity, the court cannot control their official discretion, but may compel them to exercise it. *Littlefield, Attorney General, et al. v. Newell, et al.*, 85 Me. 246, 249.

[HN6] "Mandamus is an appropriate and necessary proceeding where a petitioner shows: (1) that his right to have the act done, which is sought by the [\*70] writ, has been legally established; (2) that it is the plain duty of the party against whom the mandate is sought to do the act, and in the doing of which no discretion may be exercised; (3) that the writ will be availing, and that the petitioner has no other sufficient and adequate remedy. *Dennett v. Mfg. Co.*, 106 Maine, 476, 478."

*Webster v. Ballou*, 108 Me. 522, 524.

"While authorities are numerous and in entire harmony upon the point in issue, we find a well expressed statement in a very recent note to *State v. Stutsman*, 776 Ann. Cases, 1914D, where the following language is used; [HN7] 'When the law requires a public [\*\*\*8] officer to do a specified act, in a specified way, upon a conceded state of facts, without regard to his own judgment as to the propriety of the act, and with no power to exercise discretion, the duty is ministerial in character and performance may be compelled by mandamus if there is no other remedy. When, however, the law requires a judicial determination to be made, such as the decision of a question of fact, or the exercise of judgment in deciding whether the act should be done or not, the duty is regarded as judicial and mandamus will not lie to compel performance.' See also High's Extraordinary Legal Remedies, Sec. 24; Wood on Mandamus Page 19; extensive note to *Dane v. Derby*, (54 Maine, 95) found in 89 Am. Dec., 722; and extensive note to *State v. Gardner*,

98 Am. St. Rep., 858; *Denett v. Acme Mfg. Co.*, 106 Maine, 476."

*Nichols v. Dunton*, 113 Me. 282, 283, 284.

However, mandamus is available to promote justice when there has been an abuse of discretion which has resulted in manifest injustice. *Chequinn Corporation v. Mullen, et al., supra*.

It is here noted that the Appellant argues that the Assessor did not conduct a diligent investigation. [\*\*\*9] If not, he undoubtedly could be compelled to make such an investigation, [\*71] as it was clearly his statutory [\*\*396] duty to do so. However, we are not concerned with the claim of the Appellant in this respect. The Appellant does not seek to compel the Assessor to conduct a diligent investigation but to cause the properties of the Laboratories to be placed upon the tax rolls.

At this time we note also that the claim is made that the peremptory writ must strictly follow the alternative writ, and that if the full relief requested and ordered by the alternative writ cannot be granted no relief at all may be given. We consider such a harsh rule not applicable to the situation present in the instant case in which the peremptory writ does not enlarge upon the terms of the alternative writ, and orders the performance of only part of the acts referred to in that writ. It is sufficient for the purposes of this case to state that the peremptory writ was not broader in its terms than the alternative writ. We take this occasion, however, to suggest that we would not now be disposed to follow *Dane v. Derby*, 54 Me. 95, 102 insofar as that case holds that the peremptory [\*\*\*10] writ may not grant relief short of the "full extent" requested and ordered by the alternative writ.

Was there a plain duty on the part of the Assessor to cause the property of the Laboratories to be placed upon the tax rolls?

Local assessors in this state have historically occupied a unique position as public officers. Their duties and authority are imposed by law. They are not liable to the direction and control of the municipality. A town has no power to abate a tax assessed by the local assessors. *Inhabitants of Brownville v. U.S. Peywood and Shank Company*, 123 Me. 379, 382. R.S., 1954, Chap. 16, Sec. 68, as amended, gives the Assessor general supervision over the administration of the assessment and taxation laws of this state and over local assessors and all other assessing officers [\*72] in the performance of their duties. [HN8] The provisions of this section, however, are not broad enough to authorize the Assessor to order the local

assessors to include in the assessment rolls property considered by the local assessors to be tax exempt. Any authority on the part of the Assessor in this respect must be found, if any exists, in Section 72.

[HN9] Under the provisions [\*\*\*11] of Section 72 the Assessor has the power to order the reassessment of any or all real and personal property, or either, in any town where in his judgment such reassessment is advisable or necessary to the end that all classes of property in such town shall be assessed in compliance with the law. Assuming that this provision is broad enough to authorize the Assessor to order the local assessors to include in the tax rolls property theretofore carried as exempt property, we rule that under the terms of the statute action thereunder is entirely within the discretion of the Assessor. After receiving such an order the local assessors, upon failure to comply therewith, become liable for willful neglect of duty and subject to all penalties provided by law in such cases. Furthermore, the only appeal provided in such a case is by petition and appeal as from the original assessment. There is no provision for a hearing or for an appeal by the local assessors. Taking these factors into consideration, the Assessor might well hesitate to exercise his discretion by issuing such an order. The Assessor has the privilege of resorting to this procedure in all cases coming within the meaning of [\*\*\*12] the statute but cannot be compelled by mandamus to do so.

In no other part of Section 72 is the Assessor empowered to control the action of the local assessors by ordering them to place property on the assessment rolls. He may thereunder direct the attorney general or the county attorney to institute legal proceedings to compel local assessors to comply with the provisions of law governing the assessment or taxation of property. In such event the local assessors [\*73] cannot be compelled to place property on the assessment [\*\*397] rolls except after hearing and judgment against them. The Appellant does not ask that the Assessor be ordered to direct legal proceedings against the local assessors. He asks that the Assessor be ordered to cause the property to be placed upon the tax rolls, and the order in the alternative writ follows this request.

The alternative writ is regarded as the foundation of all the subsequent proceedings in the case. It should expressly and clearly state the precise thing which is required of the respondent. In its form and general features, the peremptory writ

of mandamus differs only from the alternative writ in the omission of the alternative [\*\*\*13] clause, substituting therefor a peremptory and absolute command against which no cause can be shown. It is tested by the same principles applicable in construing the sufficiency of the alternative writ. See High's Extraordinary Remedies, Sections 537, 538, 539, 578, and 564.

[HN10] The *peremptory* writ of mandamus is a stern, harsh writ and when issued is an inflexible peremptory command to do a particular act without condition, limitation, or terms of any kind. Disobedience to its commands may subject the person against whom the writ is issued to proceedings for contempt. It is therefore essential that the mandate state the duty required in clear, distinct, and explicit terms. See *Bangor v. County Commissioners*, 87 Me. 294, 297; *Hartshorn v. Assessors of Ellsworth*, 60 Me. 276, 281; *Nolan v. McCoy* (R.I.) 73 A. (2nd) 693 (1950); 55 C.J.S. Mandamus, Secs. 318, and 319; 35 Am. Jur., Mandamus, Sec. 351 and 381.

An examination of the alternative writ discloses the following allegations, to wit, that it is the duty of the State Tax Assessor to exercise general supervision over the administration of the assessment and taxation laws of the [\*74] State [\*\*\*14] of Maine, 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 their just value thereof in compliance with the laws of the state, and that it is the further duty of the State Tax Assessor to bring to the attention of the town assessors all cases in their respective towns consisting of failure to assess property liable to taxation, and it is his further duty to direct proceedings, actions, and prosecutions to be instituted to enforce all laws relating to the assessment and taxation of property.

The mandatory clause of the alternative writ commands the appellant to cause certain properties of the laboratories to be placed upon the assessment rolls.

It is clear that the commands of the peremptory writ cannot enlarge upon those contained in the alternative writ.

We have already determined that a direct order to the local assessors under Section 72 is entirely discretionary on the part of the Assessor. If the mandatory clause of the alternative writ was designed to order the Assessor to compel the local assessors to place the property on the tax rolls, on the theory that the Assessor had [\*\*\*15] authority to

do so under his general supervisory powers, the mandatory order was not proper because he had no general power to compel the local assessors to take such action. If it was the purpose of the alternative writ to compel the Assessor to direct the attorney general or county attorney to institute proceedings against the local assessors, the mandate does not so state with the clarity and explicitness to which the Assessor was entitled, and which the law requires to be given.

For the reasons hereinbefore stated no writ of mandamus may as a matter of law be issued to "cause to be placed upon the assessment rolls for taxation" real or personal property. At this point, under the facts peculiar to [\*75] this case, the

entry as to the appeal poses a dilemma. Of the 13 points of appeal, all but 1 challenges the trial court's finding on the facts. The remaining point contends that the trial court [\*\*398] erred in failing to order the peremptory writ upon the terms of the alternative writ. The effect of sustaining the appeal would imply that the appellant is entitled to all of the remedy which he seeks. A denial of the appeal would affirm the action of the trial justice [\*\*\*16] and leave the peremptory writ in effect. Neither result is possible as a matter of law. We, therefore, dismiss the appeal and direct that bothd the peremptory and alternative writ be quashed. No costs to either party on appeal.

*So ordered .*