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Property Tax Alert: Law Changes How Property Tax Assessors Gather and Protect Proprietary Information

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By N. Joel Moser, municipal and regulatory attorney at Bernstein Shur

Maine's Constitution requires local assessors to determine a property's assessed value each year on April 1. Determining the assessment of commercial or industrial taxable property however, can be very difficult. As a result, local assessors sometimes issue a request for information from the taxpayer under Section 706 of Maine's property tax laws. This article discusses the importance of responding to a Section 706 Request and describes two amendments to this law. One amendment provides for a specific 30-day deadline for responding to a Section 706 Request, and the other amendment provides new protections for a taxpayer who is asked to submit information that the taxpayer considers confidential or proprietary.

Local property tax assessors will occasionally send taxpayers a letter requesting a list of all of the taxpayer's taxable property within the municipality. This is typically done when a taxpayer has complex commercial or industrial property, but this type of letter can be sent to any taxpayer. The assessor's letter is known as a "Section 706 Request" for information and is named after Section 706 of Maine's property tax statutes. This important and unfamiliar law controls how an assessor may request information from a taxpayer regarding the taxpayer's taxable real and personal property.

An assessor has longstanding authority under Maine law to request information concerning the "nature, situation and value" of a taxpayer's property that is subject to taxation. When an assessor is using the income or other accepted method of valuation, the law specifically allows the assessor to request from the taxpayer "information about income and expenses, manufacturing or operational efficiencies, manufactured or generated sales price trends or other related information."

Understandably, some taxpayers view a Section 706 Request as an unreasonable intrusion into commercially sensitive information. But ignoring a Section 706 Request would be a serious legal error. Although an assessor cannot force a taxpayer to turn over the information requested in a Section 706 Request, if the taxpayer fails to respond to the assessor's Section 706 Request, the taxpayer will be prohibited from challenging the assessment later through

an appeal. It therefore is critically important for taxpayers to provide a substantive response to such a request.

The Maine Legislature has made two important amendments to Section 706 in response to concerns raised by taxpayers. First, a taxpayer now has 30 days from receipt of the Section 706 Request to provide a substantive response back to the tax assessor. Upon written request to the assessor, the taxpayer is entitled to a 30-day extension, and the assessor may at any time grant written requests for additional extensions. Second, the Section 706 amendments provide new protections for requested information that a taxpayer considers confidential or proprietary. The law now specifically makes confidential all proprietary information, which 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 Section 706 now commits a Class E crime.

Given these new changes, what should a taxpayer do when in receipt of a Section 706 Request? The taxpayer should respond truthfully, accurately, and timely (i.e., within 30 days) to the request, carefully labeling all commercially proprietary information as confidential. Because the taxable value of property interests is a key element in securing economic incentives, structuring property transfers, and predicting tax assessments that may make or break transactions, it is important to protect a taxpayer’s right to challenge or appeal an assessment. Responding in a timely manner to a Section 706 Request preserves that right should it become necessary.

N. Joel Moser, Esq., M.P.A. is co-chair of Bernstein Shur’s Property Tax & Valuation Team and an Affiliated Member of the International Association of Assessing Officers. Bernstein Shur’s Property Tax and Valuation Team is ready to partner with businesses, municipalities, tax practitioners and individual taxpayers on all varieties of property tax matters. To learn more, contact Joel Moser at jmoser@bernsteinshur.com or 207-228-7155.