

TECHNICAL INFORMATION RELEASE
TIR 2007-001 February 22, 2007

A Technical Information Release is designed to provide immediate information regarding tax laws administered by the Department or the policy positions of the Department as a service to taxpayers and practitioners. A Technical Information Release represents the position of the Department on the limited issues discussed herein based on current law and Department interpretation. For the current status of any tax law, practitioners and taxpayers should consult the source documents (i.e., Revised Statutes Annotated, Rules, Case Law, Session Laws, etc.). Questions should be directed to Customer Service at (603) 271-2191.

**VIEW FACTOR ADJUSTMENTS AFFECTING THE DETERMINATION
OF FAIR MARKET VALUE**

The purpose of this information release is to provide guidance to selectmen and assessors regarding view factor adjustments affecting the determination of fair market value for assessment purposes.

Since the Board of Tax and Land Appeal's decision in the Town of Orford Reassessment Order, Board of Tax and Land Appeals Docket No. 21473-05RA (November 3, 2005), the issue of the fair taxation of taxpayers owning land with views has been in the forefront of the debate concerning the property tax. The Legislature, the Board of Tax and Land Appeals and the Assessing Standards Board have all taken action to improve the consistency and transparency of view factor adjustments. The Department of Revenue Administration will act to ensure that assessments are proportional and to assist municipalities to obtain the best products from their investments in revaluations. Whenever possible, the Department will assist municipalities undergoing revaluations to make sure that the requirements for the documentation for view factor adjustments are met. The Department will also use its authority under RSA 21-J:3, XXV to petition the Board of Tax and Land Appeals if it appears that municipal officials have deliberately refused to implement view factor adjustments so as to cause property values to become disproportionate. This will require the revaluation work to be done again at additional cost to the municipality. Should municipal officials implement revaluations without justifiable view factor adjustments, the disproportionality will be detected either during the Department's annual equalization survey or during its review of assessments.

The Board of Tax and Land Appeals recognized in its Orford decision that there are legitimate concerns relating to the difficulty of assigning values to this attribute of property, applying the assessment methods consistently, and providing documentation so that the taxpayers can understand how adjustments based on view factors are determined. However, much of the public debate has focused on the misleading rhetoric characterizing adjustments based on view factors as a "view tax." Although legislation has been introduced to limit adjustments based on view factors to certain properties, and some public officials believe that the adjustments based on view factors are contrary to land use policies, such adjustments are required under existing law, which requires values to be based on market value.

In accordance with HB1206, in June of 2006, the Assessing Standards Board adopted a standard for documentation that the Department of Revenue Administration will require for revaluations that are effective as of April 1, 2007. (For more information please see DRA TIR 2006-004, http://www.nh.gov/revenue/tirs/2006_004.doc) The adoption of standards for documentation that is applicable to view factor adjustments will improve the consistency of such adjustments

and will enable taxpayers to better understand them. While the adoption and enforcement of these standards will improve the quality of view factor adjustments, the Assessing Standards Board has issued the following statement to educate the public about the legal requirement for such adjustments and the consequences of public officials refusing to implement view factor adjustments.

“The Assessing Standards Board has been out on the road to receive general comment through verbal and written testimony on assessing guidelines and practices. This is one of the responsibilities of the Assessing Standards Board per RSA 21-J:14-b. The overwhelming majority of verbal and written testimony related to the use of a view factor in determining fair market value. There appears to be widespread misunderstanding of how various influences, including view, applies to the assessment of the value of land. This widespread misunderstanding could lead to the incorrect perception that there is a separate “view tax”. The Assessing Standards Board recognizes that New Hampshire law does not allow for a separate view tax.

In an effort to provide clear guidelines that can be used by all municipalities in the State, the Assessing Standards Board provides the following:

The Constitution requires “taking value anew at least every 5 years . . .” New Hampshire law requires that the standard of “fair market value” in assessing property be used. The NH Supreme Court has ruled in Evelyn Sirrell vs. State of New Hampshire in May 2001 that the standard to be used is fair market value.

Making arbitrary adjustments to fair market value creates unlawful and disproportional assessments.

Failure to use fair market value will be easily detected in the equalization process.

Disproportionate taxation resulting from this will force additional revaluations, which cost large sums of money. This additional cost will be borne by all taxpayers in the municipality.

The taxpayer has a fundamental right to challenge the accuracy of their assessed value and that right is exercised during the hearing, abatement, and appeal process.”

Minutes of Meeting of the Assessing Standards Board, December 14, 2006.

The Legislature, the Assessing Standards Board, the Board of Tax and Land Appeals, and the Department of Revenue Administration have spent a great deal of time addressing the issue of view factor adjustments and have taken specific actions to improve assessments. While other bills may be pending, and debate on the issue will likely continue, the Department of Revenue Administration will enforce the law that is currently in effect.

Individuals who need auxiliary aids for effective communication in programs and services of the Department of Revenue Administration are invited to make their needs and preferences known to the N.H. Department of Revenue Administration, 45 Chenell Drive, Concord, NH 03301 or by contacting them at (603) 271-2318.