

# Chapter 1

# Property Tax

# History

## Section 1.1 - History Preface

When folks refer to the New Hampshire advantage, they often think about the fact that, unlike our immediate neighbors (and most other states), New Hampshire manages to pay for its government without a state income or sales tax. By default, that leaves the property tax as the major source of revenue in New Hampshire. Historically rejecting “broad based” taxes, New Hampshire relies most heavily on the property tax to fund local services and public education. The role of property taxes in New Hampshire is substantial. Given our State’s reliance on it, it is imperative that we in the tax assessing community get it right. This manual is offered to new selectmen and [assessors](#), [taxpayers](#) and all those engaging in tax assessing work in our State. We hope all readers will deem it to be a useful tool and friendly resource to help taxpayers understand the property tax and assist practitioners to assess [property](#) fairly and equitably.

### The “Claremont” NH School Funding Case

In most states, the method of funding for education has been a major legal issue. New Hampshire has been no exception. The Claremont Case was brought in the 1980’s when the City of Claremont and several other municipalities banded together to challenge the fairness of the funding of education in the State of New Hampshire. Their basic argument was that property poor municipalities were less able to fund an “adequate education” for their children than municipalities with a greater tax base. (In established state law, our constitution guarantees that the state is responsible for creating [equity](#) in the area of education.) The New Hampshire Supreme Court found a lack of equity and New Hampshire’s funding structure for education was ruled unconstitutional. Without going into great detail, several rounds of this legal challenge have ensued. On numerous occasions, the courts have ordered the legislature to change the system. The legislature has responded. However, our legislature’s response has been consistent in their resistance to the passage of any broad based taxes, such as sales or income taxes to fund education. In 1999, the legislature passed the state property tax (now Education Tax), RSA 76:3, as a response to Claremont II.

As the first ever statewide property tax was implemented, questions as to equity among [jurisdictions](#) emerged. The Court challenge, commonly known as the “Sirrell” case (named for the lead plaintiff Mayor Sirrell of Portsmouth) was brought. In that case, a coalition of municipalities, including the City of Portsmouth, argued several issues. One of the major points they argued was that the system of taxation in New Hampshire was not equitably administered. In that case, Sirrell portrayed the State of New Hampshire as a place where individual cities and towns could tax and revalue property as they pleased. The level of State oversight of the locally administered property tax came into question.

Technical measurements of the lack of equity between municipalities were presented for the Court to consider. The Superior Court found that the property tax, as administered at the time, in fact, was inequitable and declared it unconstitutional. On [appeal](#), the State of New Hampshire argued that the system was fundamentally sound; perhaps in need of some improvement, but not unconstitutional. In the end, the New Hampshire Supreme Court largely agreed with the State, reversing the lower Court’s decision in the Sirrell Case, while at the same time acknowledging several of its harsher findings. They ordered the Legislature to pass laws that would address specific inadequacies that the lower court had found.

Essentially, the Court's directions were to improve practices and enhance standardization. A reorganization of the New Hampshire Department of Revenue Administration (DRA) was directed. Around the same time, the Assessing Standards Board (ASB) and Equalization Standards Board (ESB) were created in 2001. (*In 2011, the Equalization Board's mission was merged into the ASB and the ESB was dissolved by statute in 2012.*) The new laws revised the DRA's historic role of consultancy (that included providing revaluation services) and clarified the DRA's future role as monitor and administrator of assessing standards and practices. The ASB would be the body from which rules, guidelines and eventually standards would be established. The DRA would now consult, audit and enforce property tax practices.

Positions on the ASB would be appointed by the Governor and approved by the Executive Council, drawing from experienced assessing professionals and a knowledgeable cross section of the public (much like other state professional standards boards). Among its directives, the ASB was charged with creating rules, guidelines and eventually standards for [assessors](#) to follow. Further, the ASB was directed to create and maintain an Assessing Manual for local selectmen, assessors, and taxpayers to use as a reference.

## **Section 1.2 – Introduction**

New Hampshire's Constitution is the second oldest in the United States. Adopted June 2, 1784, our constitution gives to the General Court the power to levy taxes. That body, also known as the New Hampshire House of Representatives and Senate, has in turn established laws that assigned property tax duties to local "selectmen," who make up the governing bodies of municipalities.

A public-spirited citizen, who volunteers to run for the local Board of Selectmen, wakes up the day after the election to the fact he/she has shouldered a very great responsibility for the economic well-being of his/her neighbors. This citizen is now a local assessor and will be responsible for all the tough decisions that assessing entails.

In many of the larger municipalities, Boards of Selectmen hire professional assessors (either as local officials or as private contractors) to do the work of assessing. City (and some town) charters have shifted the assignment from the governing body to specific Boards of Assessors, which is permissible under state law. However the ultimate responsibility is where the founding fathers originally placed it, with the elected local officials.

The Supreme Court has put a fine point on it. An assessor is a "public officer," who holds an important public trust. An assessor is not simply an agent of a community. The assessor must be established as an arbiter of fairness. Few things are more important to human beings than the respect of their families, their neighbors and their fellow citizens. Generally, respect is subject to the manner in which one behaves. The property tax process is no different. Respect must be earned.

The public duty of assessors, which is to assign shares of the [tax burden](#), is serious business. Processes must be well documented, transparent, credible, accurate and fair. The process requires all of these attributes to establish the public's trust. The foundation of any sound property tax system where opinions of value are cornerstones, are the ethical individuals with personal integrity who lend that integrity to the property tax system. By design, a healthy tax process has checks and balances, audits and accountability, in order to assure the public that its trust of the property tax system is well deserved.

If there is but a single theme in this manual, it is that the property tax must be fair, equitable and just if the tax and the people who administer it are to earn the public trust.

What follows next is some background to the origins of the property tax, along with a discussion of methods, practices and resources for maintaining the professional property tax process that the taxpayers of New Hampshire expect.

## **Section 1.3 - History of Ad Valorem Taxation**

### A Long Tradition – Ancient Background

The origin of the property tax goes back a long way. In the Old Testament, we read in II Kings, Chapter 23, Verse 35, “*And Jehoiakim gave the silver and the gold to Pharaoh: but he taxed the land to give the money according to the commandment of Pharaoh; he exacted the silver and gold of the people of the land, of everyone, according to his taxation, to give it unto Pharaohnechok.*”

### Modern Background

Early agrarian societies required taxes be paid “in kind” as a percentage of the annual crop. Some civilizations even had tax caps limiting the maximum tax to a certain level of the crop. [Classification](#) was also an early tool, specifying different tax rates for different crops.

In the 1600’s, the Spaniards had developed two types of property taxes. The first was a one percent tax on the value of [real estate](#). The second was a five percent tax on the selling price of real estate transfers. England had a long history of taxing by the number of windows and chimneys in a building. Like the others mentioned, this also was an [ad valorem tax](#) of sorts since these attributes added to the value of buildings.

The early philosophers, out of whose ideas capitalism and the free enterprise system grew, were in agreement that the very purpose of government – its essential reason for being – was to protect and preserve life, liberty and [property](#). New Hampshire’s Constitution, founded on those early convictions, makes that abundantly clear. The only variable in that foundation is property. We all have life, and should have liberty, both to the fullest degree. But we own property in varying amounts.

What, therefore, is more proper and fitting than that the share of money each of us is asked to contribute to government be proportionate to the share of property we expect government to preserve and protect?

In New Hampshire, the tax schedule in 1742 specified the following amounts of tax:

Land (within fence, meadows or marsh, moveable) 10 shillings per acre; oxen four years old and over, 3 pounds; steers, cows and heifers, 30-40 shillings if three years old; 20 shillings if two years old; yearlings, 10 shillings; horses three years and over, 3 pounds; swine one year and over, 10 shillings; sheep one year and over, exempt; double houses (two story), 10 shillings.

For more than 200 years, Adam Smith’s four maxims of taxation have endured. He was the author of the landmark book, “The Wealth of Nations” and is widely acknowledged as the founder of

modern economics. Often referred to as Smith's "canons of taxation" the founding principles of taxation are:

1. Equality
2. Certainty
3. Convenience of payment
4. Economy in collection



*For any tax, the cost of avoidance must be greater than the cost of compliance.*  
—Arlo Woolery

According to contemporary tax scholar Arlo Woolery, the guiding principle of taxation is simply:

Tax policy and its administration, at its core, should reflect these principles.

### **Section 1.4 - History of New Hampshire Real Property Taxation**

[Real property](#) or "estates," was the source of revenue in New Hampshire even in colonial times and was continued after the War for Independence as the new Constitution was adopted in 1784. The first state tax was collected as a levy upon municipalities in proportion to their own local inventories of [property](#).

A constitutional amendment adopted by the people in 1902 allowed for the taxation of inheritances. The General Court's enactment of such a tax three years later marked the beginning of a state tax structure independent of the municipalities.

#### Assessing Land and Improvements

The State Tax Commission was established in 1911 and was the predominant taxing authority for both state and local taxes for many years.

The trend continued in 1923, as major changes were made in the way money was treated as "property." It was no longer to be listed on local inventories, partly because citizens were less and less willing to admit their ownership of stocks and bonds. Municipal assessors had no effective way to discover such "property." The state took over the task and imposed, instead, a state tax on interest and dividends.

The separation continued with the establishment of a meals and rooms tax in 1967. The State's role was expanded in a special spring session of the General Court in 1970 when most personal property was exempted from the local tax in a far-reaching reform. Classes removed from the local rolls the following year were stock in trade, farm livestock and poultry, fuel pumps, mills and machinery. In place of these, the state imposed a direct tax on business profits, from which a part of that revenue was promised to towns and cities to make up for the revenue lost from the elimination of the personal property tax.

The State Tax Commission, in the midst of this period of reform, mandated a procedural change that continues to have an effect on local assessors. Beginning in 1968, it required that [land assessments](#) be made and listed separately from [improvements](#). It had full power to do so, since the courts ruled some time before that the Commission was "responsible for overseeing all assessing officials in the performance of their duties," and was the highest "tax assessing authority."

[Taxpayer](#) appeals had long been made only to the court system that, over time, took referring some cases back to the Tax Commission. A new law in 1955 provided for direct appeals by taxpayers to the Commission itself.

Constitutional amendments exempted standing wood and timber from the [property tax base](#) (in 1942) and allowed for the [assessment](#) of unimproved [land](#) at values indicated by its “current use” (in 1968). These amendments have produced further changes which had to be incorporated into the evolving tax structure.

The Board of Taxation was established in 1973. This was the beginning of a quasi-judicial agency designed to handle taxpayer appeals. The State Tax Commission was abolished in 1978 and the Department of Revenue Administration was created. The appellate function continued to be modified. The Eminent Domain Commission, which had been created in 1971, and the Board of Taxation were merged in 1982 to create the Board of Tax and Land Appeals, as we know it today.

The Department of Revenue Administration was reorganized effective January 1, 1986. At that time, it was established that the Commissioner who heads the agency was ultimately the authority in charge of the property tax process. [Assessors](#) as “public officers” are under the general supervision of the Commissioner. This broad authority was redefined in 1999 when the DRA ceased its role as a potential provider of local revaluation services. Today the Commissioner is in charge of the overall administration of the property tax system, certifying assessing professionals, and upholding the quality and [uniformity](#) of assessments.

The newly combined Municipal and Property Division within the DRA has a broad responsibility: to assist municipalities with the job of [appraisal](#) while providing guidance and education to local [assessors](#). A Bureau within the Division is responsible for the sensitive task of [equalization](#): the determination of the [market value](#) of all [property](#). Equalization maintains a standard yardstick of value (market value) statewide and is critical when shared common [tax burdens](#) such as the county tax are calculated and allocated to the municipalities.

### Twentieth Century

It was early in this century when American economists and [appraisers](#) developed the outlines of appraisal theory, as it is known today. In 1934, the National Association of Assessing Officers was formed. Today it is known as the International Association of Assessing Officers (IAAO) since its members and the professional standards they represent are recognized around the world.

In more recent years, scholars have come up with new ideas on where to find and collect state and local revenue. Other states, counties and even municipalities have turned to drafts on the wealth stream and the flow of money – sales and income taxes, etc. – so that the role of the property tax in state and local government has fallen sharply. Nationally, until the early twenties, the property tax was providing 80% of such revenue throughout the United States. By the mid-fifties the tax was providing 45% of revenue and was down to 32% by 1994.

As a point of comparison, New Hampshire’s reliance on the property tax has remained high and was 54% of all revenue collected in 2012.

## Section 1.5 - Department of Revenue Administration

The forerunner of the Department of Revenue Administration was the State Tax Commission. Established in 1911, this was at that time, the predominant taxing authority for both state and local taxes. One important ruling involving the property tax was made in 1969 when the State Tax Commission required that [land assessments](#) be made and listed separately from those of [improvements](#).

The State Tax Commission was abolished in 1978 and replaced by the Department of Revenue Administration. The DRA, as we know it today, is the result of a further re-structuring of the department effective January 1, 1986. An important feature in the new structure was that it clearly established the Commissioner as the individual in charge of the Department. Assessors, serving as “public officers,” are under the general supervision of the Commissioner.

The Municipal and Property Division, under the leadership of a director, has broad responsibility for assisting municipalities with all aspects of the property tax process. These include the “timber tax,” “gravel tax,” utility taxation, [equalization](#), and revaluation monitoring, along with the review of appraisal practices or town-wide revaluations once every five years. The equalization process analyzes 25,000 to 30,000 sales throughout the state in conjunction with the local values in order to establish an assessment to sales ratio. These results are used for both calculating the total [equalized values](#) of each municipality as well as evaluating the quality of each municipality’s assessment program. The Municipal Division’s primary function is to set property [tax rates](#) and to provide technical assistance to municipal officials regarding budgeting, finance, and local tax collection.