

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWELVE

—
H.P. 1291 - L.D. 1750

An Act To Create the Maine Board of Tax Appeals

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Independent Appeals Office, created in Public Law 2011, chapter 439, is to assume the responsibility of overseeing state tax appeals on July 1, 2012; and

Whereas, this Act eliminates the Independent Appeals Office and establishes the Maine Board of Tax Appeals in its place and, to comply with federal law, removes provisions that allow for the dissemination of confidential tax information; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-B, sub-§10 is enacted to read:

10.

Maine Board of Tax Appeals \$100/Day 36 MRSA §151-D

Sec. 2. 36 MRSA §111, sub-§1-C is enacted to read:

1-C. Board. "Board" means the Maine Board of Tax Appeals as established in Title 5, section 12004-B, subsection 10.

Sec. 3. 36 MRSA §151, as amended by PL 2011, c. 380, Pt. J, §5 and repealed and replaced by c. 439, §2 and affected by §12, is repealed and the following enacted in its place:

§151. Review of decisions of State Tax Assessor

1. Petition for reconsideration. A person who is subject to an assessment by the State Tax Assessor or entitled by law to receive notice of a determination of the assessor and who is aggrieved as a result of that action may request in writing, within 60 days after receipt of notice of the assessment or the determination, reconsideration by the assessor of the assessment or the determination. If a person receives notice of an assessment and does not file a petition for reconsideration within the specified time period, a review is not available in Superior Court or before the board regardless of whether the taxpayer subsequently makes payment and requests a refund.

2. Reconsideration by division. If a petition for reconsideration is filed within the specified time period, the assessor shall reconsider the assessment or the determination as provided in this subsection.

A. Upon receipt by the assessor, all petitions for reconsideration must be forwarded for review and response to the division in the bureau from which the determination issued.

B. Within 90 days of receipt of the petition for reconsideration by the responding division, the division shall approve or deny, in whole or in part, the relief requested. Prior to rendering its decision and during the 90 days, the division may attempt to resolve issues with the petitioner through informal discussion and settlement negotiations with the objective of narrowing the issues for an appeals conference or court review, and may concede or settle individual issues based on the facts and the law, including the hazards of litigation. By mutual consent of the division and the petitioner, the 90 days may be extended for good cause, such as to allow further factual investigation or litigation of an issue by that or another taxpayer pending in court.

C. If the matter between the division and the petitioner is not resolved within the 90-day period, and any extension thereof, the petitioner may consider the petition for reconsideration denied. The petitioner may not consider the petition for reconsideration denied after either the reconsidered decision has been received by the petitioner or the expiration of 9 years following the filing of the petition for reconsideration, whichever occurs first. A petition for reconsideration considered denied pursuant to this paragraph constitutes final agency action. A petitioner elects to consider the petition for reconsideration denied pursuant to this paragraph by:

(1) For a small claim request, filing a petition for review in Superior Court. For purposes of this subparagraph, "small claim request" has the same meaning as in paragraph E; or

(2) For all other requests:

(a) Filing a statement of appeal with the board; or

(b) Filing a petition for review in Superior Court.

D. A reconsideration by the division is not an adjudicatory proceeding within the meaning of that term in the Maine Administrative Procedure Act.

E. A reconsidered decision rendered on any request other than a small claim request constitutes the assessor's final determination, subject to review by either the board or directly by the Superior Court. A reconsidered decision rendered on a small claim request constitutes the assessor's final determination and final agency action and is subject to de novo review by the Superior Court. For purposes of this paragraph, "small claim request" means a petition for reconsideration when the amount of tax or refund request in controversy is less than \$5,000.

F. A person who wishes to appeal a reconsidered decision under this section:

(1) To the board must file a written statement of appeal with the board within 60 days after receipt of the reconsidered decision; or

(2) Directly to the Superior Court must file a petition for review in the Superior Court within 60 days after receipt of the reconsidered decision.

If a person does not file a request for review with the board or the Superior Court within the time period specified in this paragraph, the reconsidered decision becomes final and no further review is available.

G. Upon receipt of a statement of appeal or petition for review filed by a person pursuant to paragraph F, the board or Superior Court shall conduct a de novo hearing and make a de novo determination of the merits of the case. The board or Superior Court shall enter those orders and decrees as the case may require. The burden of proof is on the person, except as otherwise provided by law.

Sec. 4. 36 MRSA §151-B, as enacted by PL 2011, c. 439, §3 and affected by §12, is repealed.

Sec. 5. 36 MRSA §151-C, sub-§1, as enacted by PL 2011, c. 439, §4 and affected by §12, is amended to read:

1. Appointment. The Commissioner of Administrative and Financial Services shall hire the taxpayer advocate as an employee of the bureau. The taxpayer advocate need not be an attorney.

Sec. 6. 36 MRSA §151-D is enacted to read:

§151-D. Maine Board of Tax Appeals

1. Board established. The Maine Board of Tax Appeals, established in Title 5, section 12004-B, subsection 10, is established as an independent board within the Department of Administrative and Financial Services and is not subject to the supervision or control of the bureau. The purpose of the board is to provide taxpayers with a fair system of resolving controversies with the bureau and to ensure due process.

2. Members; appointment. The board consists of 3 members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over taxation matters and confirmation by the Legislature. No more than 2 members of the board may be members of the same political party. The Governor shall designate one board member to serve as chair. The Governor may remove any member of the board for cause.

3. Qualifications. The members of the board must be residents of this State and must be selected on the basis of their knowledge of and experience in taxation. A member of the board may not hold any elective office or any public office involving assessment of taxes or administration of any of the tax laws of this State. At least one member must be an attorney. No more than 2 members may be attorneys.

4. Terms. Members of the board are appointed for terms of 3 years. A member may not serve more than 2 consecutive terms, plus any initial term of less than 3 years. A vacancy must be filled by the Governor for the unexpired term subject to review by the joint standing committee of the Legislature having jurisdiction over taxation matters and confirmation by the Legislature during the next legislative session.

5. Quorum. Two members of the board constitute a quorum. A vacancy in the board does not impair the power of the remaining members to exercise all the powers of the board.

6. Compensation. A member of the board is entitled to a per diem of \$100. Board members receive reimbursement for their actual, necessary cash expenses while on official business of the board.

7. Powers and duties. The board has all powers as are necessary to carry out its functions. The board may be represented by legal counsel. The board may delegate any duties as necessary.

8. Appeals office. The board shall establish and maintain an office, referred to in this section as "the appeals office," in the City of Augusta to assist the board in carrying out the purposes of this section. The board may meet and conduct business at any place within the State.

9. Chief Appeals Officer; appeals office. The Commissioner of Administrative and Financial Services shall appoint the Chief Appeals Officer to assist the board and manage the appeals office. The Chief Appeals Officer must be a citizen of the United States and have substantial knowledge of tax law. The Chief Appeals Officer is an unclassified employee at salary range 33. The Chief Appeals Officer serves at the pleasure of the commissioner. The Chief Appeals Officer shall:

A. Subject to policies and procedures established by the board, manage the work of the appeals office and hire personnel, including subordinate appeals officers and other professional, technical and support personnel;

B. Assist the board in the development and implementation of rules, policies and procedures to carry out the provisions of this section and section 151 and comply with all applicable laws;

C. Prepare a proposed biennial budget for the board, including supplemental budget requests as necessary, for submission to and approval by the Commissioner of Administrative and Financial Services;

D. Attend all board meetings and maintain proper records of all transactions of the board; and

E. Perform other duties as the board and the Commissioner of Administrative and Financial Services may assign.

10. Appeals procedures. Appeals of tax matters arising under this chapter are conducted in accordance with this subsection.

A. If requested by a petitioner in a statement of appeal, the appeals office shall hold an appeals conference to receive additional information and to hear arguments regarding the protested assessment or determination. The board shall set a rate of no more than \$150 as a processing fee for each petition that proceeds to an appeals conference. These fees must be credited to a special revenue account to be used to defray expenses in carrying out this section. Any balance of these fees in the special revenue account does not lapse but is carried forward as a continuing account to be expended for the same purposes in the following years.

B. The appeals office shall provide a petitioner with at least 10 working days' notice of the date, time and place of an appeals conference. The appeals conference may be held with fewer than 10 working days' notice if a mutually convenient date, time and place can be arranged.

C. An appeals officer shall preside over an appeals conference. The appeals officer has the authority to administer oaths, take testimony, hold hearings, summon witnesses and subpoena records, files and documents the appeals officer considers necessary for carrying out the responsibilities of the board.

D. If a petitioner does not include a request for an appeals conference in the statement of appeal, the appeals officer shall determine the matter based on written submissions by the petitioner and the division within the bureau making the original determination.

E. Both a petitioner and the assessor may submit to the appeals officer, whether or not an appeals conference has been requested, written testimony in the form of an affidavit, documentary evidence and written legal argument and written factual argument. In addition, if an appeals conference is held, both the petitioner and the assessor may present oral testimony and oral legal argument. The appeals officer need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law. If the appeals officer considers it appropriate, the appeals officer may encourage the petitioner and the assessor to resolve disputed issues through settlement or stipulation. The appeals officer may limit the issues to be heard or vary any procedure adopted for the conduct of the appeals conference if the parties agree to that limitation.

F. Except when otherwise provided by law, a petitioner has the burden of proving, by a preponderance of the evidence, that the assessor has erred in applying or interpreting the relevant law.

G. The appeals officer shall exercise independent judgment. The appeals officer may not have any ex parte communications with or on behalf of any party, including the petitioner, the assessor or any other employee of the Department of Administrative and Financial Services except those employees in the appeals office; however, the appeals officer may have ex parte communication limited to questions

that involve ministerial or administrative matters that do not address the substance of the issues or position taken by the petitioner or the assessor.

H. The appeals officer shall prepare a recommended final decision on the appeal for consideration by the board based upon the evidence and argument presented to the appeals officer by parties to the proceeding. The decision must be in written form and must state findings of fact and conclusions of law. The appeals officer shall deliver copies of the recommended final decision to the board.

I. The board shall consider the recommended final decision on a timely basis. The board may not have any ex parte communication with or on behalf of any party, including the petitioner, the assessor or any other employee of the Department of Administrative and Financial Services except those employees in the appeals office; however, the board may have ex parte communication limited to questions that involve ministerial or administrative matters that do not address the substance of the issue or position taken by the petitioner or assessor. After considering the recommended final decision, the board may:

- (1) Adopt the recommended final decision as delivered by the appeals officer;
- (2) Modify the recommended final decision;
- (3) Send the recommended final decision back to the same appeals officer, if possible, for the taking of further evidence, for additional consideration of issues, for reconsideration of the application of law or rules or for such other proceedings or considerations as the board may specify; or
- (4) Reject the recommended final decision in whole or in part and decide the appeal itself on the basis of the existing record.

A determination by the board is not an adjudicatory proceeding within the meaning of that term in the Maine Administrative Procedure Act. The decision, as adopted, modified or rejected by the board or appeals officer pursuant to this paragraph is the final administrative decision on the appeal and is subject to de novo review by the Superior Court. Either the taxpayer or the assessor may appeal the decision to the Superior Court and may raise on appeal in the Superior Court any facts, arguments or issues that relate to the final administrative decision, regardless of whether the facts, arguments or issues were raised during the proceeding being appealed, if the facts, arguments or issues are not barred by any other provision of law. The court shall make its own determination as to all questions of fact or law, regardless of whether the questions of fact or law were raised before the division within the bureau making the original determination or before the board. The burden of proof is on the taxpayer.

A person who wishes to appeal a decision adopted under this paragraph to the Superior Court must file a petition for review within 60 days after receipt of the board's decision. If a person does not file a request for review with the Superior Court within the time period specified in this paragraph, the decision becomes final and no further review is available.

Subject to any applicable requirements of the Maine Administrative Procedure Act, the board shall adopt rules to accomplish the purposes of this section. Those rules may

define terms, prescribe forms and make suitable order of procedure to ensure the speedy, efficient, just and inexpensive disposition of all proceedings under this section. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

Beginning in 2014 and annually thereafter, the board shall prepare and submit a report by January 1st on the activities of the board to the Governor, the assessor and the joint standing committee of the Legislature having jurisdiction over taxation matters.

Sec. 7. 36 MRSA §191, sub-§2, ¶C, as enacted by PL 1977, c. 668, §2, is amended to read:

C. The inspection by the Attorney General of information filed by any taxpayer who has requested review of any tax under this Title or against whom an action or proceeding for collection of tax has been instituted; or the production in court or to the board on behalf of the State Tax Assessor or any other party to an action or proceeding under this Title of so much and no more of the information as is pertinent to the action or proceeding;

Sec. 8. 36 MRSA §191, sub-§2, ¶UU, as reallocated by RR 2011, c. 1, §52, is amended to read:

UU. The production in court on behalf of the assessor or any other party to an action or proceeding under this Title, or the production pursuant to a discovery request under the Maine Rules of Civil Procedure or a request under the freedom of access laws, of any reconsideration decision or ~~other document setting forth or discussing the assessor's practice, interpretation of law or application of the law to particular facts~~ advisory ruling issued on or after July 1, 2012, in redacted format so as not to reveal information from which the taxpayer may be identified, except that federal returns and federal return information provided to the State by the Internal Revenue Service may not be disclosed except as permitted by federal law. A person requesting the production of any such document shall pay, at the time the request is made, all direct and indirect costs associated with the redacting of information from which the taxpayer or other interested party may be identified, plus an additional fee of \$100 per request; and

Sec. 9. 36 MRSA §191, sub-§2, ¶VV, as reallocated by RR 2011, c. 1, §53, is repealed.

Sec. 10. 36 MRSA §191, sub-§2, ¶WW is enacted to read:

WW. The disclosure of information by the assessor to the board and the subsequent inspection and disclosure of that information by the board, except that such disclosure is limited to information that is pertinent to an appeal or other action or proceeding before the board.

Sec. 11. PL 2011, c. 439, §9 is repealed.

Sec. 12. PL 2011, c. 439, §11 is amended to read:

Sec. 11. Cost administration. The Commissioner of Administrative and Financial Services, the State Tax Assessor and the ~~Chief Appeals Officer~~ Maine Board of Tax Appeals established pursuant to the Maine Revised Statutes, Title 36 ~~5~~, section ~~151-B~~ 12004-B, subsection ~~2~~ 10 shall manage the implementation of this Act to ensure that this Act is implemented within existing resources. The following principles govern costs associated with this Act.

1. The ~~Independent Appeals Office~~ Maine Board of Tax Appeals, the ~~Chief Appeals Officer appointed pursuant to Title 36, section 151-D, subsection 9~~ and the ~~appeals office established in Title 36, section 151-B 151-D~~ may have no greater cost than the appellate division of the Department of Administrative and Financial Services, Bureau of Revenue Services prior to enactment of this Act ~~and all positions within the Independent Appeals Office must have equivalent salary ranges as the positions in the appellate division prior to enactment of this Act~~. The Commissioner of Administrative and Financial Services shall take any steps necessary to ensure that the total costs associated with the ~~Independent Appeals Office~~ appeals office are no greater than the costs that would have been associated with the appellate division prior to enactment of this Act.

2. The funding associated with the current taxpayer advocate of the Department of Administrative and Financial Services, Bureau of Revenue Services must be used to fund the new taxpayer advocate hired by the Commissioner of Administrative and Financial Services and the new taxpayer advocate must have the same salary range as the current taxpayer advocate. The commissioner shall take any steps necessary to ensure that the costs associated with the new taxpayer advocate do not exceed the costs associated with the current taxpayer advocate prior to enactment of this Act.

~~3. No additional positions within the Department of the Attorney General or the Department of Administrative and Financial Services, Bureau of Revenue Services may be created as a result of this Act.~~

Sec. 13. PL 2011, c. 439, §12 is amended to read:

Sec. 12. Effective date. This Act takes effect July 1, 2012, ~~except that the Commissioner of Administrative and Financial Services is authorized to hire the Chief Appeals Officer pursuant to the Maine Revised Statutes, Title 36, section 151-B and the taxpayer advocate pursuant to Title 36, section 151-C prior to July 1, 2012 as long as those appointments do not take effect until July 1, 2012.~~

Sec. 14. Creation of Maine Board of Tax Appeals; elimination of appellate division; transition provisions. The following provisions govern the elimination of the appellate division within the Department of Administrative and Financial Services, Bureau of Revenue Services and the creation of the Department of Administrative and Financial Services, Maine Board of Tax Appeals, established in the Maine Revised Statutes, Title 5, section 12004-B, subsection 10.

1. The appellate division is eliminated and the Maine Board of Tax Appeals is established on July 1, 2012.

2. The Commissioner of Administrative and Financial Services shall appoint the Chief Appeals Officer under the Maine Revised Statutes, Title 36, section 151-D no later than July 1, 2012.

3. Three authorized positions and any incumbent personnel in the appellate division are transferred to the Maine Board of Tax Appeals. These employees retain all the employee rights, privileges and benefits, including sick leave, vacation leave and seniority, provided under the Civil Service Law, collective bargaining agreements and current state personnel policies.

4. All property and equipment previously belonging to or allocated for the use of the appellate division become the property of the Maine Board of Tax Appeals.

5. Any funds appropriated for use by the appellate division must be transferred to the Maine Board of Tax Appeals.

Sec. 15. Staggered terms of members of the Maine Board of Tax Appeals. Notwithstanding the Maine Revised Statutes, Title 36, section 151-D, subsection 4, the terms of the members of the Maine Board of Tax Appeals, established in Title 36, section 151-D, are staggered. Of the initial appointees to the board, the Governor shall designate one to be appointed for one year, one for 2 years and one for 3 years.

Sec. 16. Appropriations and allocations. The following appropriations and allocations are made.

**ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF
Maine Board of Tax Appeals N135**

Initiative: Provides appropriations to fund the Personal Services and related All Other costs of 2 Staff Attorney positions, one Office Associate II position and one Chief Appeals Officer position at the newly created Maine Board of Tax Appeals within the Department of Administrative and Financial Services.

GENERAL FUND	2011-12	2012-13
POSITIONS - LEGISLATIVE COUNT	0.000	4.000
Personal Services	\$0	\$353,871
All Other	\$0	\$67,912
GENERAL FUND TOTAL	\$0	\$421,783

Maine Board of Tax Appeals N135

Initiative: Provides an allocation to establish an operating account to receive fines imposed by the Maine Board of Tax Appeals to be used to support the expenses of the board.

OTHER SPECIAL REVENUE FUNDS	2011-12	2012-13
All Other	\$0	\$45,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$45,000

Revenue Services - Bureau of 0002

Initiative: Eliminates appropriations for the Personal Services and related All Other costs of 2 Staff Attorney positions, one Office Associate II position and one Public Service Manager II position due to the elimination of the Independent Appeals Office within the Department of Administrative and Financial Services, Bureau of Revenue Services.

GENERAL FUND	2011-12	2012-13
POSITIONS - LEGISLATIVE COUNT	0.000	(4.000)
Personal Services	\$0	(\$353,871)
All Other	\$0	(\$67,912)
GENERAL FUND TOTAL	\$0	(\$421,783)

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF DEPARTMENT TOTALS

	2011-12	2012-13
GENERAL FUND	\$0	\$0
OTHER SPECIAL REVENUE FUNDS	\$0	\$45,000
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$45,000

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

In House of Representatives, 2012

Read twice and passed to be enacted.

..... Speaker

In Senate, 2012

Read twice and passed to be enacted.

..... President

Approved 2012

..... Governor