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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 J, §5 and repealed and replaced by c. 439, §2 and affected by §12, is repealed and the following enacted in its place: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 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 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 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 review by the Superior Court in accordance with the Maine Administrative Procedure Act. For purposes of this paragraph, "small claim request" means a petition for reconsideration when:

(1) The amount of tax or refund request in controversy, exclusive of interest or penalty, is less than \$5,000;

(2) The only issue raised by the petition for reconsideration is waiver of interest or penalties; or

(3) The only issue raised by the petition for reconsideration is whether the request for refund or other requested relief is barred by the statute of limitations.

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 salary of the Chief Appeals Officer is within salary range 47. 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 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. 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 decision adopted under this paragraph is the final administrative decision on the appeal and is subject to review by the Superior Court in accordance with the Maine Administrative Procedure Act.

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-B12004-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-B151-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 and the transfer of appeals cases to 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 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 November 1, 2012. The commissioner shall set the number of appeals officers and any other employees and rate of compensation in accordance with Public Law 2011, chapter 439, section 11 and direct the Chief Appeals Officer to fill those positions no latter than January 1, 2013.

3. The appellate division is eliminated on January 1, 2013, and all open cases of the appellate division must be transferred to the Maine Board of Tax Appeals. The Maine Board of Tax Appeals, the Bureau of Revenue Services and the Commissioner of Administrative and Financial Services shall develop a process to provide for the transition of cases in process by the appellate division on the date of its elimination.

4. All Other funds and Personal Services funds from the elimination of positions in the appellate division must be transferred to the Maine Board of Tax Appeals to carry out the provisions of this Act.

5. To the extent not inconsistent with the provisions of the Maine Revised Statutes, Title 36, section 151-D, all existing rules, regulations and procedures in effect, in operation or adopted in or by the appellate division are hereby declared in effect and continue in effect until rescinded, revised or amended by the Maine Board of Tax Appeals.

6. To the extent not inconsistent with the provisions of the Maine Revised Statutes, Title 36, section 151-D, all existing contracts, agreements and compacts currently in effect in the appellate division continue in effect.

7. All records, 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.

8. All existing forms, licenses, letterheads and similar items bearing the name of or referring to the appellate division may be used by the Maine Board of Tax Appeals until existing supplies of those items are exhausted.

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.

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

SUMMARY

This bill makes the following changes to the laws governing appeals of decisions of the State Tax Assessor.

It provides the means for a taxpayer to consider that a petition for reconsideration has been denied if a decision has not been issued by the Department of Administrative and Financial Services, Bureau of Revenue Services within 90 days of the receipt of the petition.

It provides for a reconsidered decision on a small claim request at the bureau level, which may be appealed directly to the Superior Court, and defines a small claim request. It provides that all other reconsidered decisions may be appealed de novo to either the Superior Court or the Maine Board of Tax Appeals.

It eliminates the Independent Appeals Office, as created in Public Law 2011, chapter 439, and instead creates the Maine Board of Tax Appeals, an independent, 3-member board appointed by the Governor. The members of the board serve 3-year terms. It provides for per diem compensation to the board members and outlines the powers and duties of the board, including adopting rules necessary to oversee formal appeals of decisions of the State Tax Assessor. It creates a special revenue account for appeals fees to be used for operating expenses of the board.

It amends the provision in current law allowing for a redacted copy of certain documents to be made public to comply with federal confidentiality statutes and to clarify that the dissemination of those documents is on a prospective basis only.

It eliminates the restriction on the disclosure of information by the State Tax Assessor to the taxpayer advocate, since this bill also maintains the taxpayer advocate as an employee of the Bureau of Revenue Services.

It allows the State Tax Assessor to disclose information to the Maine Board of Tax Appeals and allows the board to disclose that information, but limits the disclosure to information that is pertinent to an appeal or other action or proceeding before the board.

It provides for the transfer of funds from the Bureau of Revenue Services to the Maine Board of Tax Appeals, the elimination of positions within the bureau, the creation of new positions in the appeals office of the Maine Board of Tax Appeals and the transition of cases from the bureau to the board.