



STATE OF MAINE
MAINE BOARD OF TAX APPEALS
134 STATE HOUSE STATION
19 ELKINS LANE, ELKINS BLDG
AUGUSTA, MAINE
04333-0134
www.maine.gov/boardoftaxappeals

WILLIAM J. KELLEHER
Chairman

RICHARD A. NASS
Board Member

D. KELLEY YOUNG
Board Member

PAUL L. BOURGET
Chief Appeals Officer

February 3, 2021

Joint Standing Committee on Taxation
c/o Legislative Information
100 State House Station
Augusta, Maine 04333-0100

RE: 2020 Annual Report of the Maine Board of Tax Appeals (BTA). 36 M.R.S. § 151-D(10).

Dear Senator Chipman and Representative Terry:

Please find attached the annual report of the Maine Board of Tax Appeals, describing the activities of the Board during 2020.

Sincerely,

Paul L. Bourget

Paul L. Bourget
Chief Appeals Officer
Maine Board of Tax Appeals
207-287-2862
paul.bourget@maine.gov



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2020 ANNUAL REPORT OF THE MAINE BOARD OF TAX APPEALS (BTA)

The following is the annual report of the Maine Board of Tax Appeals (the “Board”) for calendar year 2020. 36 M.R.S. § 151-D(10). Questions regarding this report should be directed to the Board’s Appeals Office at 134 State House Station, 19 Elkins Lane, Elkins Building, Augusta, Maine 04333-0134, or directly to the Board’s Chief Appeals Officer, Paul Bourget, at 207-287-2862 or by email at Paul.Bourget@maine.gov.

Table of Contents

Section	Page
1. Board History and Structure	3
2. Appeals Procedure	4
3. Appeals Filed with the Board in 2020	5
4. Cases Closed in 2020	5
5. Appeals Currently Pending Before the Board	6
6. Published Decisions	8
7. Superior Court Review of Board Decisions	9
8. Direct Appeals of Non-BTA Cases to the Superior Court	10
9. Taxpayer Access to the Board	10
10. Staffing Shortage	11
11. Board Member Vacancies	12
12. Recommendations	12

1. Board History and Structure

The Board was established on July 1, 2012, as an independent entity within the Department of Administrative and Financial Services to provide taxpayers with a fair system for resolving disputes with Maine Revenue Services (“MRS”).¹ The Board is committed to ensuring that all parties before it receive due process and a speedy, just, and inexpensive resolution in the appeals filed with it. The Board consists of 3 Board members that are appointed by the Governor and confirmed by the Legislature. The Board is supported by an Appeals Office presently staffed by 2 Appeals Officer positions and 1 part-time Administrative Assistant.² Prior to creation of the Board, MRS conducted its own reviews of administrative tax controversies.

Where the amount in controversy is \$1,000 or more, taxpayers may appeal disputes involving the following taxes and fees either to the Board or to the Superior Court:

- Individual and corporate income taxes
- Sales, use, and service provider taxes
- The estate tax
- The franchise tax
- The insurance company tax
- Special and other taxes and fees, including the cigarette, tobacco, potato, and mahogany quahog taxes, and the prepaid wireless telecommunications fee under Title 35-A of the Maine Revised Statutes

Also, although the Board is not related to the State Board of Property Tax Review and does not have jurisdiction over most property tax disputes, it does have jurisdiction over appeals from MRS’s Business Equipment Tax Reimbursement (BETR) and the Business Equipment Tax Exemption (BETE) determinations.

¹ The creation of the independent tax appeals office contributed to Maine’s having received the grade of “A” on the Council on State Taxation (“COST”) Scorecard for 2013 and 2016. The scorecard is a periodic summary of “the fairness of the states’ laws and regulations for state tax administration and appeal of state tax matters.” Maine was 1 of only 8 states to receive an “A” in 2013 and 1 of only 4 states to receive an “A” in 2016.

² There is one Chief Appeals Officer position and one subordinate Appeals Officer position. The Administrative Assistant is shared between BTA, the State Board of Property Tax Review, and the State Civil Service Appeals Board.

2. Appeals Procedure

The Board's appeal process is set forth in 36 M.R.S. § 151-D and 18-674 C.M.R. ch. 100. Taxpayers having a dispute with MRS must first ask MRS to reconsider its position. Following reconsideration, and if the amount of the dispute is greater than or equal to \$1,000, the taxpayer may then appeal to the Board. Once an appeal is filed with the Board, an Appeals Officer examines the issues and facts presented and the applicable law. Based on his or her examination, the Appeals Officer then prepares a recommended decision for the Board to consider when it meets to decide the appeal. The parties may request to present to the Board at its meeting and may submit an additional written statement directly to the Board. After considering the recommended decision and the parties' submissions, the Board members vote to either adopt the recommended decision as drafted, adopt it with modifications, return it to the Appeals Officer for further proceedings, or reject it and issue their own decision. 36 M.R.S. § 151-D(10)(I)(1-4).

3. Appeals Filed with the Board in 2020

There were 19 tax disputes filed with the Board between January 1, 2020, and December 31, 2020, in the total amount of \$5,654,242. In 9 of those cases (47%), the taxpayers filed and prosecuted their own appeals without an attorney or other representative. In 10 of the appeals (53%), the taxpayers requested to have informal conferences with the Appeals Officer and MRS.

The dollar amounts of the appeals filed in 2020 were as follows:

Less than \$5,000:	8	(42%)
\$5,000 - \$50,000:	6	(32%)
\$50,001 - \$100,000:	3	(16%)
\$100,001 - \$900,000:	1	(5%)
\$900,001 - \$1,000,000:	0	(0%)
<u>More than \$1,000,000:</u>	<u>1</u>	<u>(5%)</u>
Total	19	

The tax types of the appeals filed in 2020 were as follows:

Individual Income Tax:	9	(47%)
Corporate Income Tax:	3	(16%)
Sales/Use/Service Provider Tax:	3	(16%)
BETR/BETE:	1	(5%)
Pine Tree Zone:	0	(0%)
<u>Educational Opportunity Tax Credit:</u>	<u>3</u>	<u>(16%)</u>
Total:	19	

4. Cases Closed in 2020

The Board closed 17 appeals in 2020 (4 filed in 2018, 6 filed in 2019, and 7 filed in 2020), in the total dollar amount of \$2,667,313. The Board issued written decisions in 8 of those cases (47%). The 9 appeals that were closed without a written decision were settled or resolved between the parties. The dollar amount of the cases decided by the Board was \$2,099,317 (79%), while the dollar amount of the cases withdrawn was \$567,995.94 (21%).

Of the 8 written decisions, 3 cases were decided wholly in favor of MRS (38%), 1 case was decided wholly in favor of the taxpayer (13%), and 3 cases were decided partly in favor of each of the parties (38%). Additionally, 1 case was dismissed as untimely filed (13%).

The dollar amounts of the 17 appeals closed in 2020 were as follows:

Less than \$5,000:	4	(24%)
\$5,000 - \$50,000:	7	(41%)
\$50,001 - \$100,000:	2	(12%)
\$100,001 - \$900,000:	2	(12%)
\$900,001 - \$1,000,000:	2	(12%)
More than \$1,000,000:	0	(0%)
<u>Total</u>	<u>17</u>	

The tax types of appeals closed by the Board in 2020 were as follows:

Individual Income Tax:	5	(29%)
Corporate Income Tax:	2	(12%)
Sales/Use/Service Provider Tax:	7	(41%)
BETR/BETE:	1	(6%)
Pine Tree Zone:	1	(6%)
<u>Educational Opportunity Tax Credit: 1</u>	<u>1</u>	<u>(6%)</u>
<u>Total:</u>	<u>17</u>	

For cases closed by written decision of the Board in 2020, the average time between filing of the appeal and issuance of the decision was 12 months. The average time pending for all cases closed in 2020 was 7 months.³

5. Appeals Currently Pending Before the Board

There were 18 appeals pending before the Board at the end of 2020 totaling \$8,469,110. Of these 18 appeals, 6 were filed with the Board in 2019 and the other 12 were filed in 2020.

³ Three cases decided by the Board in 2020 are not included in these time-of-completion computations because they are not representative of 2020 BTA case pendency. Those cases involved delays of more than 1 year due to the taxpayer's request (1 case) and the December 2019 retirement of one of the Board's Appeals Officers (2 cases).

The dollar amounts of the pending appeals are as follows:

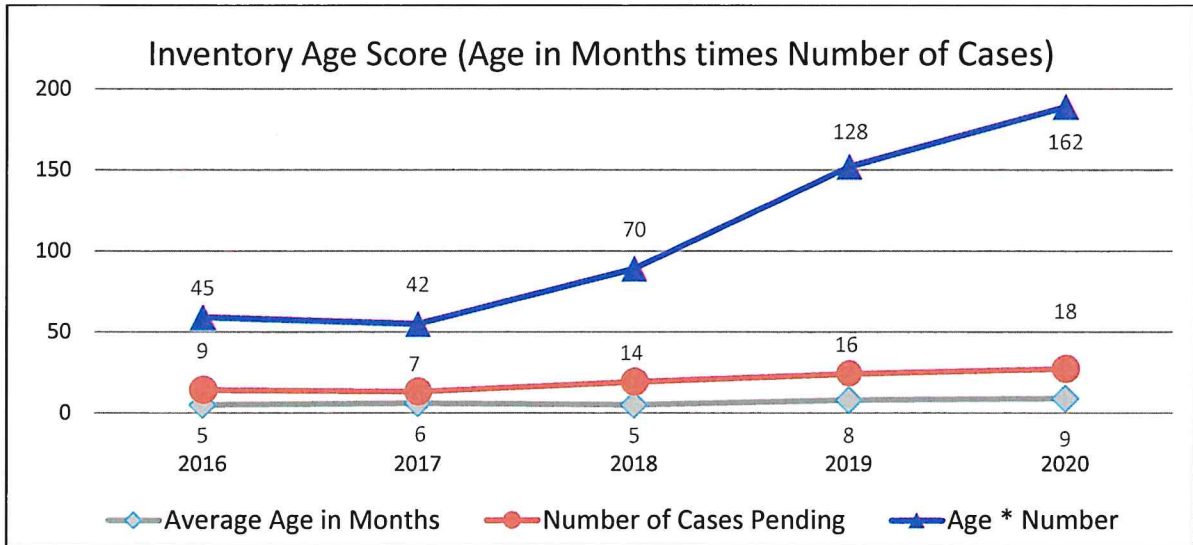
Less than \$5,000:	5	(28%)
\$5,000 - \$50,000:	5	(28%)
\$50,001 - \$100,000:	2	(11%)
\$100,001 - \$900,000:	3	(17%)
\$900,001 - \$1,000,000:	1	(6%)
<u>More than \$1,000,000:</u>	<u>2</u>	<u>(11%)</u>
Total	18	

The tax types of the pending cases are as follows:

Individual Income Tax:	6	(33%)
Corporate Income Tax:	7	(39%)
Sales/Use/Service Provider Tax:	3	(17%)
<u>Educational Opportunity Tax Credit:</u>	<u>2</u>	<u>(11%)</u>
Total:	18	

The number of cases pending at the end of 2020 (18) was greater than in previous years.

Furthermore, the average age of the pending appeals was 9 months, which is greater than in previous years. The increases in age and number of pending appeals, set out on the following chart, are the result of the staffing shortage described in Section 10 of this report and suggest that the taxpayers and MRS will continue to experience longer case-completion times unless remedial measures are taken.



6. Published Decisions

The Board's written decisions address a variety of tax types and important tax issues. The Board publishes its written decisions on its website in redacted format so as to protect taxpayer identities and the confidentiality of tax information. In 2020, the Board published 3 redacted decisions, bringing the total of published Board decisions to 41. The Board also has an additional 19 decisions ready to be redacted and published.

The Board's website collection of redacted decisions is a Maine tax law resource for taxpayers and tax practitioners beyond the bulletins and publications issued by MRS. In addition to the Board's website, the Board's decisions are available through the Westlaw and Lexis online legal research services, as well as through the Maine Law Library and the Maine State Library (Digital Commons). The University of Maine School of Law has assigned a judicially recognized Uniform Maine Citations format for citing Board decisions.

Because the Board's decisions are appealable to the Superior Court, the Board does not publish them until after the 60-day appeal period has lapsed. To ensure the integrity of its published decisions, the Board postpones publishing any decisions that have been appealed to the Superior Court until the matter has been resolved by the courts.

In 2020, the Board was unable to publish its additional inventory of 19 decisions due to the staffing shortage described in Section 10 of this report. Once the 19 additional decisions are processed and published, the Board will have 60 redacted decisions available on its website for public reference: <http://www.maine.gov/boardoftaxappeals/decisions>.

7. Superior Court Review of Board Decisions

Decisions of the Board are appealable to the Superior Court. In 2020, there was 1 appeal of a Board decision to the Superior Court, bringing the total of appeals from Board decisions to 17 since the Board's inception in 2012. The outcome and status of these 17 court appeals is set forth on the following chart:

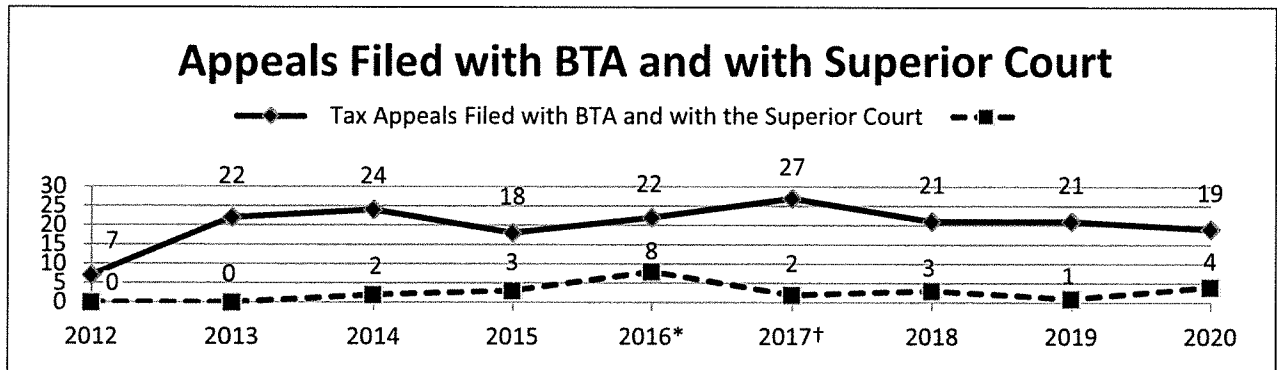
	Board Action	Superior Court	Law Court
Decided--Prevailing party			
2016	MRS (9 months)	MRS (19 months)	MRS (11 months)
2015	Taxpayer (10 months)	MRS (36 months)	MRS (18 months)
2013	Taxpayer (5 months)	Taxpayer (33 months)	Taxpayer (11 months)
2013	MRS (6 months)	Taxpayer (29 months)	MRS (12 months)
2013	Taxpayer (8 months)	MRS (12 months)	Withdrawn (2 months)
Resolved at Court			
2019	Taxpayer (8 months)	MRS (Consent) (1 month)	N/A
2018	MRS/Taxpayer (13 mos.)	Stip. Dismiss. (5 months)	N/A
2017	Taxpayer (12 months)	Stip. Dismiss. (7 months)	N/A
2016	Taxpayer (8 months)	MRS (Consent) (1 month)	N/A
2016	MRS (12 months)	Withdrawn (6 months)	N/A
2014	MRS (10 months)	Withdrawn (12 months)	N/A
2013	MRS (10 months)	Withdrawn (22 months)	N/A
Pending in Court			
2020	Taxpayer (23 months)	Pending (2 months)	--
2019	MRS (17 months)	Pending (15 months)	--
2019	MRS (10 months)	Pending (19 months)	--
2018	MRS/Taxpayer (11 mos.)	Pending (30 months)	--
2018	MRS (13 months)	Taxpayer (25 months)	Pending (9 months)

Of the cases listed above, only 6 have been fully litigated to a decision in the Superior Court. Of those 6 cases, the average time between filing and decision by the Board was 8.5 months, while the average time between filing and decision in Superior Court was 26 months.

8. Direct Appeals of Non-BTA Cases to the Superior Court

Pursuant to 36 M.R.S. § 151, tax cases may be appealed directly to the Superior Court from an MRS reconsidered decision without Board involvement. Presently, 6 non-BTA tax appeals are pending in the Maine court system—1 filed in 2017, 1 filed in 2019, and 4 filed in 2020.

Below is a graph summarizing the number of cases filed with the Board and those filed directly with the Superior Court.



* 2016—A group of 7 cases having similar issues and bases of assessment were appealed directly to the Superior Court in May 2016. Those cases subsequently settled in April 2017.

† 2017—A group of 10 cases having similar issues and bases of assessment were appealed to the Board of Tax Appeals in December 2017.

9. Taxpayer Access to the Board

Taxpayers may appeal to the Board from an assessment, from the denial of a refund request, or from some other dispute with MRS. Taxpayers are notified of their right to appeal by language contained in MRS's Decision on Reconsideration. The Board also maintains a website at www.maine.gov/boardoftaxappeals that contains information about the tax appeal process and links to Maine's tax statutes, the Board's rules of practice and procedure, the Board's redacted decisions, and several relevant websites. The Board also has an email link on its website for public inquiries.

In previous years, the Board maintained an information booth at the annual Maine Tax Forum, a tax practitioner educational symposium held in Augusta for 2 days each November. In 2020, however, the Board was unable to utilize this resource because the Forum was held as a videoconference.

10. Staffing Shortage

The State budget reduction initiative of 2017 eliminated one of the Board's Appeals Officer positions. Since that time, the Appeals Office has operated on a short-handed basis. As a result, decisions on appeals have taken longer to prepare and the Board's case inventory has increased in both age and count as explained in Sections 5 and 6 of this report. The impact of this staffing shortage falls on the taxpayers and MRS, who are the parties to the Board's appeals. This impact is contrary to the Legislative intent that the Board provide a "speedy, efficient, just and inexpensive disposition" of all appeals filed with it. 36 M.R.S. § 151-D(10). The staffing shortage has also caused a delay in publishing redacted decisions of the Board, the impact of which falls on all Maine taxpayers and tax practitioners who are deprived of that resource. *See* 36 M.R.S. § 191(2)(YY) ("The board may make available to the public redacted decisions that do not disclose the identity of a taxpayer or any information made confidential by state or federal statute.").

The Board also experienced a staffing change in 2020 with the retirement of an Appeals Officer in December 2019. That Appeals Officer had been with the Board since July 2012 and was well-versed in Board protocol and Maine tax law. A new employee joined the Board from the private sector as an Appeals Officer in March 2020. A significant percentage of the Board's appellate resources was required to be diverted to onboarding the new staff member.

11. Board Member Vacancies

The law regarding BTA Board Member vacancies and appointments is as follows:

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.

.....

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.

.....

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.

36 M.R.S. § 151-D(2), (4-5).

Presently, all three Board Member positions are due for confirmation and appointment.

As with many other governmental processes, the pandemic has interrupted the confirmation schedule. We are, however, working with the Office of Boards and Commissions and are encouraged that new appointments will be made during the current legislative session.

12. Recommendations

It is my first recommendation that the Appeals Officer position that was eliminated in 2017 be reinstated as soon as is practicable. In the alternative, creation of a new Paralegal position would go a long way toward improving Board performance.

It is my second recommendation that replacement Board Members be appointed as soon as possible.

Respectfully submitted,

Date: February 3, 2021

Paul L. Bourget
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