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2022 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 2022 per 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, Derek A. Jones, at 207-287-2863 or by email at derek.a.jones@maine.gov.

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1. Board History and Structure

The Maine Board of Tax Appeals 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 the Chief Appeals Officer, an Appeals Officer, and 1 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

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 The Administrative Assistant is now shared between the Board of Tax Appeals and the State Civil Service Appeals Board. Previously, the Administrative Assistant was also shared with the State Board of Property Tax Review.

MRS's Business Equipment Tax Reimbursement (BETR) and the Business Equipment Tax Exemption (BETE) determinations.

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. 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 2022

There were 13 tax disputes filed with the Board between January 1, 2022, and December 31, 2022, in the total amount of \$2,789,841.53. In 9 of those cases (69%), the taxpayers filed and prosecuted their own appeals without an attorney or other representative.³ In 5 of the appeals (39%), the taxpayers requested to have informal conferences with the Appeals Officer and MRS.

The dollar amounts of the appeals filed in 2022 were as follows:

No information ⁴ :	1	(8%)
Less than \$5,000:	1	(8%)
\$5,000 - \$50,000:	5	(38%)
\$50,001 - \$100,000:	3	(23%)
\$100,001 - \$1,000,000:	2	(15%)
<u>More than \$1,000,000:</u>	<u>1</u>	<u>(8%)</u>
Total	13	

The tax types of the appeals filed in 2022 were as follows:

Individual Income Tax:	1	(8%)
Corporate Income Tax:	4	(31%)
Sales/Use/Service Provider Tax:	8	(62%) ⁵
BETR/BETE:	0	(0%)
<u>Estate Tax:</u>	<u>0</u>	<u>(0%)</u>
Total:	13	

4. Cases Closed in 2022

The Board closed 12 appeals in 2022 (1 filed in 2020, 8 filed in 2021, and 3 filed in 2022), in the total dollar amount of \$5,264,034.34. The Board issued written decisions in 10 of

³ This number includes legal entities not utilizing outside counsel.

⁴ One appeal was filed without sufficient information to determine the amount at issue, and no case management conference was held before the submission of this report.

⁵ All eight cases were related to the recent change in law resulting from *South Dakota v. Wayfair, Inc.*, 585 U.S. ____, 138 S. Ct. 2080 (2018). See also 36 M.R.S.A. § 1951-B(3) (repealed September 19, 2019); see also id. § 1754-B(1-B) (effective September 19, 2019).

those cases (83%). Two appeals were withdrawn by the taxpayers. The dollar amount of the cases decided by the Board was \$5,198,244.07 (99%).

Of the 10 written decisions, all cases were decided wholly in favor of MRS (100%), and 0 cases provided some relief to the taxpayer.

The dollar amounts of the 12 appeals closed in 2022 were as follows:

Less than \$5,000:	4	(33%)
\$5,000 - \$50,000:	3	(25%)
\$50,001 - \$100,000:	2	(17%)
\$100,001 - \$1,000,000:	2	(17%)
<u>More than \$1,000,000:</u>	<u>1</u>	<u>(8%)</u>
Total	12	

The tax types of appeals closed by the Board in 2022 were as follows:

Individual Income Tax:	4	(33%)
Corporate Income Tax:	1	(8%)
Sales/Use/Service Provider Tax:	4	(33%)
<u>BETR/BETE:</u>	<u>1</u>	<u>(8%)</u>
Total:	10	

For cases closed by written decision of the Board in 2022, the average time between filing of the appeal and issuance of the decision was 355 days.⁶

5. Appeals Currently Pending Before the Board

There were 13 appeals pending before the Board at the end of 2022 totaling \$3,070,332.21. Of these 13 appeals, 12 were filed with the Board in 2022 and the remaining appeal was filed in 2021.

⁶ This represents a decrease of roughly 85 days over 2021.

The dollar amounts of the pending appeals are as follows:

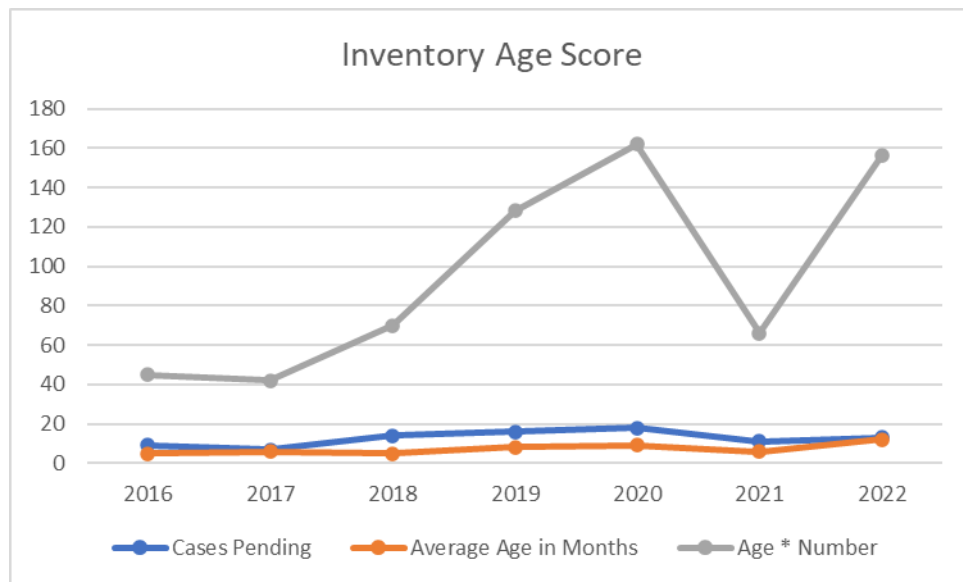
No Information ⁷ :	1	(8%)
Less than \$5,000:	1	(8%)
\$5,000 - \$50,000:	5	(38%)
\$50,001 - \$100,000:	3	(23%)
\$100,001 - \$1,000,000:	2	(15%)
<u>More than \$1,000,000:</u>	<u>1</u>	<u>(8%)</u>
Total	13	

The tax types of the pending cases are as follows:

Individual Income Tax:	2	(15%)
Corporate Income Tax:	4	(31%)
Sales/Use/Service Provider Tax:	6	(46%)
BETR/BETE:	0	(0%)
<u>Estate Tax:</u>	<u>1</u>	<u>(8%)</u>
Total:	13	

The number of cases pending at the end of 2022 (13) was more than in 2021.

Furthermore, the average age of the pending appeals was 229 days (roughly 8 months), which is greater than in 2021.



⁷ One appeal filed without sufficient information to determine the amount at issue.

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 to protect taxpayer identities and the confidentiality of tax information. In 2022, the Board did not redact decisions. However, the Board plans to come current with redacted decisions in 2023. The Board's website for public reference: <http://www.maine.gov/boardoftaxappeals/decisions>.

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.

7. Superior Court Review of Board Decisions

Decisions of the Board are appealable to the Superior Court. In 2022, there were 2 appeals of a Board decision to the Superior Court, bringing the total number of appeals from Board decisions to 27 since the Board's inception in 2012. Further, during the year, the Maine Supreme Judicial Court issued one decision on a matter originating at the Board and received on appeal originating at the Board.

8. Direct Appeals of Non-Board 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.

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. That email is <https://www.maine.gov/boardoftaxappeals/contact.html>.

10. Staffing

Between its creation in 2012 and 2021, the Board's staff had been steadily reduced. At the end of 2021, the Board staff consisted of the Acting Chief Appeals Officer and the Board Clerk shared with other Boards, including the State Board of Property Tax Review ("SBPTR"). In 2022, the Board Clerk's SBPTR duties were transferred to another position, and the vacant Appeals Officer position filled. Further, the Acting Chief Appeals Officer, Derek A. Jones, was appointed to Chief Appeals Officer.

11. Recommendations

It is my recommendation that the structure and mandate of the Board be examined by the Legislature with input from Maine Revenue Services, practitioners, and the Board itself. Further, the Appeals Office recommends that the jurisdiction of the Board be limited to matters where the amount in controversy is \$500,000 or less.

Respectfully submitted,

Date: January 3, 2023

Derek A. Jones
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