

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 1010 - L.D. 1371

An Act To Promote Fair and Efficient Resolutions in Tax Disputes

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

Sec. 1. 36 MRSA §143, first ¶, as amended by PL 1999, c. 708, §7, is further amended to read:

The State Tax Assessor may compromise a tax liability arising under this Title upon the grounds of doubt as to liability or doubt as to collectibility, or both. Upon acceptance by the assessor of an offer in compromise, the liability of the taxpayer in question is conclusively settled and neither the taxpayer nor the assessor may reopen the case except by reason of falsification or concealment of assets by the taxpayer, fraud or mutual mistake of a material fact ~~or if, in the opinion of the assessor, justice requires~~. The decision of the assessor to reject an offer in compromise is not subject to review under section 151. The assessor's authority to compromise a tax liability pursuant to this section is separate from and in addition to the assessor's authority to cancel or abate a tax liability pursuant to section 142.

Sec. 2. 36 MRSA §151, as amended by PL 2003, c. 242, §1, is repealed and the following enacted in its place: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 matter must be forwarded to the appeals office.

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

Sec. 3. 36 MRSA §151-B is enacted to read:

§151-B. Independent Appeals Office

1. Office established. There is established within the bureau the Independent Appeals Office, referred to in this chapter as "the appeals office."

2. Composition of appeals office; Chief Appeals Officer. The appeals office consists of the Chief Appeals Officer hired by the Commissioner of Administrative and Financial Services and other appeals officers and at least one administrative staff person hired by the commissioner or the Chief Appeals Officer. The commissioner shall designate the Chief Appeals Officer, who shall manage the work of the appeals officers, including the designation of an appeals officer to preside over each appeal forwarded to the appeals office under section 151, subsection 2, paragraph C. The Chief Appeals Officer, other appeals officers and staff of the appeals office are employees of the bureau. Each appeals officer must be a citizen of the United States and have substantial knowledge of tax law. The position of Chief Appeals Officer may not exceed the salary range of the former Director of the Appellate Division, unless the commissioner adjusts the other positions within the appeals office so that the total personal services cost of the appeals office does not exceed the total personal services cost of the former Appellate Division.

3. Appeals. An appeal of a decision arising from a petition for reconsideration filed pursuant to section 151, subsection 1 must be conducted pursuant to this subsection.

A. If requested by the petitioner in the petition for reconsideration, the appeals office shall hold an appeals conference to receive additional information and to hear arguments regarding the protested assessment or determination. The petitioner shall pay a processing fee of \$100 for each petition that proceeds to an appeals conference.

except that this fee is waived if the total amount in controversy is less than \$5,000 or when good cause, as determined by the Chief Appeals Officer, for waiver is shown.

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

B. An appeals officer shall preside over the appeals conference. The appeals officer has all the authority of the assessor with respect to the conduct of proceedings of the appeals conference, including, but not limited to, the power to question any person who testifies and to direct the course of the appeal.

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

D. Both the petitioner and the responding division may submit the following 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 or written factual argument, or both. In addition, if an appeals conference is held, both the petitioner and the responding division may present oral testimony or oral legal argument, or both. 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 responding division 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.

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

F. The appeals officer shall exercise independent judgment. The appeals officer may not have any ex parte communications with any person, including the petitioner, the responding division, the assessor or any other employee of the bureau 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 responding division.

G. The appeals officer shall render a decision 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 decision of the appeals officer is deemed the assessor's determination on reconsideration and is not subject to review or revision by the assessor or any employee of the bureau outside of the appeals office. Notice of the final decision or order to the petitioner must be made in accordance with section 111, subsection 2. Notice of the final

decision or order must be made to the responding division via the state interoffice mail system.

H. The appeal proceeding, with or without the appeals conference, is not an adjudicatory proceeding within the meaning of that term in the Maine Administrative Procedure Act.

4. Denial of appeal. If the requested appeal involves a denial or deemed denial of a refund claim, a refund claim with respect to which a conference has been requested under section 5280 or an assessment that is paid in full or part and the appeals office fails to mail to the petitioner a decision on the appeal within 9 months after the petition for reconsideration was filed, the petitioner may elect but is not obligated to deem the appeal denied. The petitioner elects to deem the appeal denied by filing in Superior Court a petition for review of the deemed denial. The deemed denial constitutes final agency action and is subject to court review as provided in subsection 6. The petitioner may not make the deemed denial election after either the appeals officer's decision has been received by the petitioner or the expiration of 9 years following the filing of the reconsideration petition, whichever occurs first. Notwithstanding any other provision of law, a claim for credit or refund of any tax imposed under this Title is deemed denied 10 years after it was filed if the claim has not previously been allowed or denied as final agency action. A deemed denial constitutes final agency action.

5. Review by court. The decision of the appeals officer on the petition for appeal constitutes the assessor's final determination and final agency action, which is subject to review by the Superior Court in accordance with the Maine Administrative Procedure Act, except that Title 5, sections 11006 and 11007 do not apply. Upon petition filed by the taxpayer, the Superior Court shall conduct a de novo hearing and make a de novo determination of the merits of the case. The taxpayer may raise on appeal in Superior Court any facts, arguments or issues that relate to the assessor's decision on the petition for reconsideration, regardless of whether the facts, arguments or issues were raised during the reconsideration proceeding being appealed, as long as the facts, arguments or issues are not barred by any other provision of law. The Superior 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 during the petition for reconsideration proceeding. The Superior Court shall enter such orders and decrees as the case may require. The burden of proof is on the taxpayer, except as otherwise provided by law.

6. Report. Beginning in 2013 and annually thereafter, the Chief Appeals Officer shall prepare and submit a report by January 1st on the activities of the Independent Appeals Office to the Governor, the assessor and the joint standing committee of the Legislature having jurisdiction over taxation matters.

Sec. 4. 36 MRSA §151-C is enacted to read:

§151-C. Taxpayer advocate

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

2. Duties and responsibilities. The duties and responsibilities of the taxpayer advocate are to:

A. Assist taxpayers in resolving problems with the bureau;

B. Identify areas in which taxpayers have problems in dealings with the bureau;

C. Propose changes in the administrative practices of the bureau to mitigate problems identified under paragraph B; and

D. Identify legislative changes that may be appropriate to mitigate problems identified under paragraph B.

3. Annual report. Beginning in 2012, the taxpayer advocate shall prepare and submit by August 1st an annual report of activities of the taxpayer advocate to the Governor, the assessor and the joint standing committee of the Legislature having jurisdiction over taxation matters.

4. Investigation. The taxpayer advocate may investigate complaints affecting taxpayers generally or any particular taxpayer or group of taxpayers and, when appropriate, make recommendations to the assessor with respect to these complaints. The assessor shall provide a formal response to all recommendations submitted to the assessor by the taxpayer advocate within 3 months after submission to the assessor.

5. Response. The assessor shall establish procedures to provide for a formal response to all recommendations submitted to the assessor by the taxpayer advocate.

Sec. 5. 36 MRSA §191, sub-§2, ¶PP, as corrected by RR 2009, c. 2, §107, is amended to read:

PP. The disclosure to the Department of Conservation of information contained on the commercial forestry excise tax return filed pursuant to section 2726, such as the landowner name, address and acreage, to facilitate the administration of chapter 367; ~~and~~

Sec. 6. 36 MRSA §191, sub-§2, ¶QQ, as reallocated by RR 2009, c. 2, §108, is amended to read:

QQ. The disclosure of registration, reporting and payment information to the Department of Agriculture, Food and Rural Resources necessary for the administration of Title 32, chapter 28-;

Sec. 7. 36 MRSA §191, sub-§2, ¶RR is enacted to read:

RR. 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, in redacted format so as not to reveal information from which the taxpayer may be identified. 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. 8. 36 MRSA §191, sub-§2, ¶SS is enacted to read:

SS. The disclosure by the assessor to the taxpayer advocate under section 151-C of information related to a petition for reconsideration filed by a taxpayer pursuant to section 151. The taxpayer advocate is prohibited from disclosing information obtained pursuant to this paragraph other than to the particular taxpayer to whom the information pertains.

Sec. 9. Creation of Independent Appeals Office; elimination of appellate division; transition provisions. The following provisions govern the transition of the appellate division within the Department of Administrative and Financial Services, Bureau of Revenue Services to the Independent Appeals Office within the Department of Administrative and Financial Services, Bureau of Revenue Services.

1. The appellate division is eliminated and the Independent Appeals Office is created as of July 1, 2012.

2. The Commissioner of Administrative and Financial Services shall hire the qualified appeals officers and designate the Chief Appeals Officer pursuant to the Maine Revised Statutes, Title 36, section 151-B no later than July 1, 2012. The number of appeals officers hired must be the same number as reconsideration hearing officer positions in the appellate division authorized as of July 1, 2011. The appeals officers have the same rate of compensation as the former reconsideration hearing officers.

3. To the extent not inconsistent with the provisions of Title 36, section 151-B, 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 proper authority.

4. To the extent not inconsistent with the provisions of Title 36, section 151-B, all existing contracts, agreements and compacts currently in effect in the appellate division continue in effect.

5. All records, property and equipment previously belonging to or allocated for the use of the appellate division become part of the property of the Independent Appeals Office.

6. All existing forms, licenses, letterheads and similar items bearing the name of or referring to "the appellate division" may be used by the Independent Appeals Office until existing supplies of those items are exhausted.

7. Any funds appropriated for use by the appellate division must be transferred for use by the Independent Appeals Office.

Sec. 10. Creation of taxpayer advocate; elimination of taxpayer advocate in Bureau of Revenue Services; transition provisions. The following provisions govern the creation of the position of the taxpayer advocate and the elimination of the

taxpayer advocate position within the Department of Administrative and Financial Services, Bureau of Revenue Services.

1. The Commissioner of Administrative and Financial Services shall hire the taxpayer advocate pursuant to the Maine Revised Statutes, Title 36, section 151-C no later than July 1, 2012. The level of compensation for the taxpayer advocate must be the same as for the former taxpayer advocate in the bureau.

2. To the extent not inconsistent with the provisions of Title 36, section 151-C, all existing rules, regulations and procedures in effect, in operation or adopted in or by the taxpayer advocate in the bureau are hereby declared in effect and continue in effect until rescinded, revised or amended by the proper authority.

3. To the extent not inconsistent with the provisions of Title 36, section 151-C, all existing contracts, agreements and compacts currently in effect for the taxpayer advocate in the bureau continue in effect.

4. All records, property and equipment previously belonging to or allocated for the use of the taxpayer advocate in the bureau become part of the property of the independent taxpayer advocate.

5. Any funds appropriated for use by the taxpayer advocate in the bureau must be transferred for use by the independent taxpayer advocate.

Sec. 11. Cost administration. The Commissioner of Administrative and Financial Services, the State Tax Assessor and the Chief Appeals Officer pursuant to the Maine Revised Statutes, Title 36, section 151-B, subsection 2 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 established in Title 36, section 151-B 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 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. 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.

In House of Representatives, 2011

Read twice and passed to be enacted.

..... Speaker

In Senate, 2011

Read twice and passed to be enacted.

..... President

Approved 2011

..... Governor