

MAINE STATE LEGISLATURE

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PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
MAINE REVENUE SERVICES
24 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0024

ADMINISTRATIVE & FINANCIAL SERVICES

H. SAWIN MILLETT, JR.
COMMISSIONER

MAINE REVENUE SERVICES

JEROME D. GERARD
EXECUTIVE DIRECTOR

July 30, 2012

Governor Paul R. LePage
1 State House Station
Augusta, ME 04333-0001

Senator Jonathan T. E. Courtney
Representative L. Gary Knight
Joint Standing Committee on Taxation
100 State House Station
Augusta, ME 04333-0100

State Tax Assessor Jerome D. Gerard
Maine Revenue Services
24 State House Station
Augusta, ME 04333-0024

Dear Governor LePage, Co-Chairs Courtney and Knight and Assessor Gerard:

Pursuant to Public Law 2011, Chapter 439, Section 151-C (3), I have enclosed herewith the annual report regarding the activities of the Taxpayer Advocate. Please feel free to contact me if you have any questions about this report.

Respectfully submitted,

Bruce R. Livingston
Taxpayer Advocate
Maine Revenue Services

cc: Members of the Joint Standing Committee on Taxation
Commissioner H. Sawin Millett, Jr., DAFS



Annual Report of the Taxpayer Advocate

**A Report Prepared for the Governor, the Assessor and
the Joint Standing Committee on Taxation
Pursuant to PL 2011, c. 439**

**Department of Administrative and Financial Services
Maine Revenue Services**

A handwritten signature in cursive script, reading "Bruce R. Livingston".

**Bruce R. Livingston
Taxpayer Advocate
Maine Revenue Services**

July 30, 2012

This report is due annually by August 1st as provided in PL 2011, c. 439, § 4, Section 151-C (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.”

While my friend, Nina Olson, the National Taxpayer Advocate, has now submitted eleven annual reports to Congress, this will be my first report as a result of the above noted legislation. When Ms. Olson presented her tenth Annual Report to Congress in December 2010, she stated that since it was her tenth report it seemed a “natural time for reflection” and queried, “What has the report accomplished these last ten years?” She stated that “perhaps the report’s greatest contribution is to make transparent the operation of federal tax administration in the United States.”

What will the Maine Taxpayer Advocate report have accomplished ten years from now? I would hope that it will continue to reflect that utilizing a rational common sense approach to Maine tax law, law seen by many taxpayers as a hopeless bureaucratic jungle, has been beneficial to both the State and its taxpayers.

Incidentally, in 2011, I was invited to participate in the American Bar Association’s Section of Taxation 2011 May Meeting in Washington, D.C. I was on a panel with Nina Olson, Jack Trachtenberg, the then New York State Taxpayer Advocate and James Arnie, the Maryland Taxpayer Advocate.

Background of the Position

The Taxpayer Advocate position was created in 1995. The purpose/mission/role of the Taxpayer Advocate (Advocate) has been to assist taxpayers who have questions about Maine tax law; concerns about their tax situation as it relates to some aspect of Maine tax law; are confused about their tax situation; or disagree with some action by Maine Revenue Services (MRS), usually an assessment of tax or collection of an amount due.

From 1995 to June 30, 2012, the Advocate had been employed by MRS and had reported directly to the State Tax Assessor or Legal Counsel. This allowed the Advocate to function as independently as possible from MRS operating divisions.

Legislative changes by the One Hundred and Twenty-Fifth Legislature (PL 2011, c. 694) resulted in the following provisions in 36 MRSA § 151-C which became effective July 1, 2012.

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.

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;
- 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.

Historically, the Advocate has worked with taxpayers concerning all taxes and programs administered by MRS, including income tax, withholding tax, sales and use tax, property tax, tax and rent (Circuit Breaker) and the Homestead Exemption.

The Advocate has worked with MRS staff in identifying areas where taxpayers have had problems in dealings with MRS. From time to time, changes in administrative practices are recommended, most often in regard to content or format of various documents and correspondence. In order to serve taxpayers, it is essential that the Advocate keep up to date on proposed, pending and enacted Maine tax law.

D. Identify legislative changes that may be appropriate to mitigate problems identified under paragraph B. (B. Identify areas in which taxpayers have problems in dealings with the bureau).

A common complaint from taxpayers is the amount of **interest** and **penalties** that are imposed on delinquent tax obligations.

Recent legislation, PL 2011, c.380, Pt K, § 1, reduced the failure to file a return penalty from 100% of the tax due to \$25 or 25% of the tax due, whichever is greater.

Interest is not a penalty, but rather constitutes a charge for the lost time value of tax revenue that should have been paid to the State of Maine when it was due. § 36 MRSA § 186, Interest, provides that the rate of interest equals the highest prime rate as published in the Wall Street Journal, rounded up to the next whole percent plus 3 percentage points. At present, the interest rate is 7%. With many interest bearing accounts in banks or credit unions yielding interest at the rate of ½ %, although I do not know what the revenue impact would be on such a measure, might the State consider lowering the interest rate on delinquent tax obligations by several percentage points?

Once in a while, the Advocate receives inquiries about resale certificates, usually from a retailer that has received notice from MRS that their resale certificate will not be renewed because they do not meet the \$3,000 annual sales threshold. Under the provisions of 36 MRSA § 1754-B (2-C), the assessor periodically reviews the status of each retailer and re-issues a resale certificate if the retailer has gross sales of \$3,000 or more during the 12 months preceding the assessor's review. \$3,000 is a low threshold, representing average monthly sales of only \$250 and generating annual sales tax revenue of only \$150.

Most retailers in the \$3,000 category are small, perhaps seasonal, mom and pop businesses. Given the fluctuation in the economy and that such a business might even have to close for a while if one of the owners becomes ill or is otherwise unable to work, perhaps it would be reasonable to modify the law so that the "look back" period is 36 months rather than the current 12 months.

Another area of concern involves the casual sale of motor vehicles, 36 MRSA 1764. According to the law, casual sales of motor vehicles are taxable, but not when the sale is from a seller to a corporation, partnership, limited liability company or limited liability partnership if the seller is the owner of a majority of the ownership interest. However, if ownership is 50/50 as with many small businesses (on the books, husband and wife each own 50%), neither of them has a majority interest and the transaction is taxable. This creates an inequity in how a transfer of property into a company is treated. The law could easily be amended to change "majority" ownership to "50% or more" ownership to correct the inequity. I would expect that the revenue loss would be insignificant.

Taxpayer problems or concerns reach the Advocate from many different sources - the Governor's constituent services staff; taxpayers or their representatives; Legislators or members of Legislative staff; staff from Maine's Congressional delegation; MRS staff - compliance (collection), income tax, sales and use tax and property tax; the Office of the federal Taxpayer Advocate; and from a fairly new position (October 2011) the Small Business Advocate for the Office of the Secretary of State. That position was formed as part of PL 2011, c. 304, "An Act To Ensure Regulatory Fairness and Reform," signed into law by Governor LePage on June 13, 2011.

When reviewing a case, the Advocate is bound by the same provisions of Maine tax law, including taxpayer confidentiality laws, as any other MRS employee. The role of the

Advocate is not intended to be a substitute for or an alternative to the MRS collection process and is not a substitute for any appeals process.

From time to time, a taxpayer with a tax problem may ask a tax examiner if there is someone else available to talk to about the case. Often those types of inquiries are referred to the Advocate. It is not possible for the Advocate to take over the case management of every matter that is referred. However, the Advocate reviews the tax issues involved, discusses the case with staff from the applicable tax division if need be and makes appropriate suggestions and recommendations as to how the case might be resolved. If appropriate, the advocate advises taxpayers about payment plans and offers in compromise.

Much of the Advocate's work is done on the telephone. The majority of inquiries that the Advocate receives, reviews and responds to come from Governor LePage's Office of Constituent Services received through DAFS or from taxpayers themselves, often upon a referral from MRS' compliance division.

Most everyday the Advocate fields telephone and email inquiries regarding various problems and situations that have nothing at all to do with the Advocate position or with MRS. These are referred to other entities such as the federal Taxpayer Advocate or State or local agencies.

The Advocate maintains a notebook to keep a record of voicemail that is received. This has proven to work a lot better than pink call slips especially since some recorded telephone messages can run to a minute or two and messages only remain on the system for a few days. Plus, it provides a useful record of calls made to the Advocate.

Since 1995, one of the duties and responsibilities of the Advocate has been responding to correspondence regarding tax issues that have been received by the Governor. That process continued through the administrations of Governors King and Baldacci and continues today with Governor LePage. MRS Division Directors address issues relevant to their Divisions, but the Advocate has responded to much of the correspondence. Effective July 1st, the Advocate will continue to respond to inquiries regarding specific tax issues, but not to questions regarding administration policy. The new Office of Tax Policy within MRS will respond to tax policy correspondence.

Since January 2011, the Advocate has sent some one hundred and fifty responses to correspondence received by Governor LePage and has sent more than one hundred letters or emails to taxpayers or their representatives on cases and issues they have presented to the Advocate.

About twice a month, on average, the Advocate is contacted by a taxpayer whose credit rating has been adversely affected by a Maine tax lien. Upon review, the Advocate has found that in most instances, the lien has been discharged, but the fact that there was a lien remains on the taxpayer's credit report. Review has usually indicated that the taxpayer did not pay as much attention to the collection process and to the notices they

received as they should have. In most cases, the taxpayer subsequently provided information, the matter was reviewed and resolved and the lien was released. Sometimes, the result of review indicates the taxpayer would have been due a refund (usually barred by the statute of limitations) or did not owe any Maine tax.

Recognizing the taxpayer's dilemma, a few years ago the Advocate initiated a program to help such taxpayers. The Advocate issues a statement over the Advocate's signature indicating that the tax lien provides an inaccurate representation of the taxpayer's Maine tax obligation and recommending that any negative effect caused by the filing of the tax lien be removed from the taxpayer's credit history and credit reports. Since 2009, the Advocate has issued nineteen such statements. It seems to have been successful since several taxpayers have contacted the Advocate to advise that the statement helped to resolve their credit problems.

Examples of situations handled by the Taxpayer Advocate over the past few months.

The Advocate responded to an email to Governor LePage from a taxpayer who had misread an article in the *Bangor Daily News* about the Governor urging Senators Snowe and Collins to support the Marketplace Fairness Act. She thought it would add new sales taxes, but the Advocate advised it does not, that the intent is to level the sales tax playing field. She had recently moved to Maine from Massachusetts. The Advocate pointed out to her, that like Mainers, those who live in Massachusetts are required to report and pay sales tax on out-of-state purchases.

The Advocate was asked to review an inquiry from a taxpayer received through a State Representative regarding the municipal taxation of personal property. The Advocate responded that although this is primarily a municipal issue, it is governed by Maine tax law, Title 36, Section 602 - "all personal property within or without the State, except in cases enumerated in section 603 (such things as personal property employed in trade, cargo trailers, store fixtures, television and radio transmitting equipment) shall be taxed to the owner in the place where he resides." Personal property is one of the more difficult aspects of municipal property tax administration. The nature of personal property is that, unlike real estate, personal property is usually portable to some degree, often located out of sight and the valuation of which is not always easy to determine. However, Maine's Constitution does require assessors to discover value and assess personal property in the same manner as real estate.

Several taxpayers who owed Maine income tax contacted the Advocate regarding compliance and payment issues in cases where MRS had received information from the IRS that a change had been made to the taxpayer's federal income tax liability, but the taxpayers had not filed an amended Maine return. By law, 36 MRSA § 5227-A, a taxpayer is required to file an amended Maine income tax return whenever the taxpayer files an amended federal return affecting the taxpayer's liability or whenever the IRS makes changes affecting the taxpayer's liability. The taxpayers were advised to provide any information that might positively affect the outcome and to work with the

compliance division to try to resolve the matter.

The Advocate reviewed several situations referred by Jay Martin, Small Business Advocate, Secretary of State. For the most part, these matters involved older tax matters that had been resolved, but not to the taxpayer's liking. The Advocate reviewed them, but usually determined there was no further relief available.

A taxpayer from Aroostook County advised Governor LePage that those in the County do not make what people who live farther south in the cities do. She wanted to know what Augusta was going to do to help Aroostook. The Advocate advised that three different measures were passed during the 2011 legislative session that may positively affect her family, the change in the Tax Rate Schedules, the one-year increase in the Standard Deduction and, beginning in 2013, the increase in the Maine personal exemption from \$2850 to the amount of the federal personal exemption, forecast to be \$3850.

A taxpayer contacted both Governor LePage and Senator Snowe about an older sales tax trust fund debt that the Advocate had addressed the year before. The taxpayer had failed to file sales tax returns and to pay sales tax for two quarters and owed more than \$2,800. Although the taxpayer advised that regular payments were being made, review indicated that a total of only \$200 had been paid sporadically, with no payments since the fall of 2011. Levy of a bank account resulted in payment in full, still leaving the taxpayer with more than \$1,000 to take care of other financial and personal matters.

Misuse of sales tax funds is a recurrent problem. Sales tax is a trust fund tax in that it is a tax collected from a customer and held in trust for the State Tax Assessor until remitted to the State of Maine along with an appropriate and timely sales tax return. Trust funds belong to the State and are not to be diverted to any other purpose. Unfortunately, some taxpayers use sales tax monies they have collected as their personal fund to pay such items as utility bills, suppliers or employees' wages. While the taxpayer may fully intend to put the money back in the till, the situation often mushrooms and that does not happen.

A typical example is a small business owner who indicates the sales tax collected has been used to keep a new business growing by using the money to pay suppliers and employees. In one instance, the taxpayer had defaulted on a payment plan, but a Senior Tax Examiner in the compliance division worked with him by modifying the payment plan to help the taxpayer get back on his feet. In many cases, as with this one, the tax problem is only the tip of the iceberg, there are other socio-economic factors involved.

Some taxpayers contact the Advocate when they realize they have agreed to overly ambitious payment plans they cannot afford. If the situation warrants, the Advocate has advised/recommended that compliance restructure the payment plan to an amount that the taxpayer can reasonably afford to pay.

In similar fashion, some taxpayers contact the Advocate after they have defaulted on a payment plan and are faced with the 25% failure to pay penalty (25% of the tax due that can be a significant figure). If the Advocate determines that a taxpayer has been making

a genuine effort to pay what they owe, but has somehow slipped up, sometimes due to illness or job loss, resulting in the demand to pay penalty being assessed, the Advocate has advised/recommended that the penalty be waived upon successful completion of a reinstated payment plan, perhaps at a reduced monthly payment.

One taxpayer was concerned that because she did not have sales of \$3,000 she will no longer have a resale certificate. She was advised of the methodology to regain a resale certificate if her sales pick up.

One taxpayer wanted Maine income tax to be modified for legitimate professional mariners. The Advocate responded that he understood the taxpayer's concern that while he is not physically in Maine for half the year, he is still subject to the same Maine income tax as someone who never leaves the State for work. However, the Advocate also mentioned that the mariner's situation appeared to be much the same as other Maine residents and taxpayers who often work out-of-state, people such as long distance truck drivers, some of whom may be out-of-state more than the mariner; iron workers, boiler makers and other construction workers who go where the work is, often for weeks or months at a time, and salesmen who are on the road a lot.

An employee from another State agency inquired about the offset of a Maine income tax refund. The Advocate explained that an agency can certify a liquidated debt to MRS and that MRS will offset any refund to that agency (36 MRSA § 5276-A). Any right to appeal is with the agency, not MRS.

The Advocate received a call from a taxpayer who often owes Maine income tax and wants MRS to use wages for a forty hour work week rather than the overtime she has consistently earned for the last several years adding up to federal adjusted gross income of \$120,000 to \$130,000. After review, the Advocate advised the taxpayer that he thought it was reasonable for MRS to utilize the higher figures since they represented what she was actually earning.

A taxpayer's representative called questioning why MRS rejected an offer-in-compromise of several thousand dollars on income tax debt of more than \$75,000. The Advocate is reviewing the matter.

One inquiry involved a Maine taxpayer who was concerned that the pension he earned in another state is subject to Maine income tax. The taxpayer was advised of the \$6,000 pension deduction and the additional pension deduction of up to \$10,000 beginning with tax year 2014.

An out-of-state taxpayer called because he had received a notice advising he owed \$2,000 in penalties and interest on his 2010 Maine income tax. In speaking with the taxpayer, I found he had not been provided with a Notification to Seller(s) of Withholding Tax Requirement (2½ % of the total sale price) on the sale of land. Similar to payroll deduction, the withholding of 2½ % is a withholding of state income tax that is claimed as an estimated tax payment when the taxpayer files a Maine's income tax return. The

taxpayer had not understood that he had to file a Maine income tax return in order to receive a refund of the 2½ % that had been withheld. A copy of the Notification to Seller(s) was sent to the taxpayer and he sent it to the people who handled the closing for him. He called later and was pleased to advise that the people who had handled the closing had acknowledged their error and were going to pay the interest and penalties for him.

The Advocate reviewed a situation where a taxpayer had paid sales tax to an out-of-state car dealer who had not remitted the tax to the State of Maine. Since by statute, the taxpayer had complied with her responsibilities, it was determined that she did not owe interest on the payment that had eventually been paid by the dealer.

A taxpayer emailed to thank the Advocate for quickly responding to his inquiry of how to obtain an income tax refund for his son-in-law who had only worked in Maine for six weeks.

A convenience store owner called for a new resale certificate because she had lost hers (uses it to buy cigarettes at Sam's Club). A new certificate was sent.

One taxpayer was concerned about owing \$1,100 in 2011 Maine income tax although they earned less money than in 2010 when they owed about \$260. Since their 2011 return had not yet been filed, the Advocate could not compare the two years, but advised that the difference was likely the result of less withholding and suggested they might want to consider estimated payments to avoid interest and penalties.

The Advocate responded to a few inquiries regarding female taxpayers who claim injured spouse status and had received notices that their Maine income tax refunds had been sent to DHHS for their spouse's child support obligations. The notices indicate that the agency to contact is DHHS and the taxpayers were advised of the procedure to get a refund of their refund from DHHS.

One taxpayer was concerned that a large federal income tax refund was being offset to her Maine income tax debt. Although she maintained that her federal adjusted gross income (FAGI) was not as much as indicated on information that the IRS provided to MRS. However, review of federal records did not show any reduction in the FAGI initially reported by the IRS.

Many other calls were received involving such issues as a son trying to bring his elderly mother's tax situation up to date; how to amend Maine income tax returns (do the federal first); a supposed discrepancy between what the taxpayer thought had been withheld from wages and what MRS was telling her (the Advocate found no discrepancy); a taxpayer trying to correct an error made by the tax preparation firm she hired; a family dealing with an income tax problem attributable to debt forgiveness; taxpayers who need new user names for I-file or passwords for log-in; and tax violation hotline inquiries.

Summation

The legislation states that this annual report is a “report of activities” of the taxpayer advocate. What is it that I do? I spend much of each day on the telephone or on the computer reviewing and analyzing taxpayer situations. No one ever calls me because they’re happy about their tax situation. Having been on the other side of the fence, so to speak, for many years, I sometimes tell taxpayers that I’ll try to be the least bureaucratic bureaucrat they’ve ever had to deal with. I think I accomplish that.

Tax problems and situations encountered by Maine taxpayers are rarely easy to deal with, either from the taxpayer’s point of view or that of MRS. In some cases, the taxpayer has an unrealistic expectation that contacting the Advocate will result in the elimination of tax or interest or penalties or maybe all three. I rarely see the easy cases, I get the tough ones. And, as the Governor’s Office of Constituent Services staff and Legislative Aides can attest, I am often Paul Harvey with “*The Rest of the Story*”.

I sometimes tell taxpayers that I do not have a magic wand. I review each, often unique, set of facts to see if there is some alternative to how the matter is being handled. Is there a suggestion or recommendation I can make to help resolve the case? I keep in mind that to the taxpayer this may be the most important and stressful event in their lives at the time.

When a taxpayer contacts the Advocate and explains that MRS is levying their wages or bank account, I know that the collection process is a long way down the collection road. If circumstance warrant, the Advocate may advise compliance/collection staff to modify a payroll deduction plan or to refund a portion of the funds levied from a bank account. There are times, however, when there is little, if anything, that the Advocate can suggest other than to encourage the taxpayer to work with the compliance/collection staff to try to resolve the matter in a mutually satisfactory fashion.

Has the Advocate stepped on some compliance/collection toes once in a while? Yes, when the Advocate has reviewed a case and determined that something different should be done because it was the right thing to do and was fair to both the State and the taxpayer under the umbrella of Maine tax law.

Maine Revenue Services’ Mission Statement states that to accomplish its mission, MRS will foster voluntary compliance with the tax laws by providing clear, complete, accurate, and timely guidance to taxpayers to help them understand and meet their responsibilities under the law and to maintain the highest standards of integrity, fairness, confidentiality and courtesy in everything MRS does.

The vision statement for MRS is to be the most effective, innovative agency in Maine state government, committed to providing the citizens of Maine with outstanding service and continuously striving to exceed their expectations.

The MRS' statement of values includes public service - every employee of Maine Revenue Services is firmly committed to delivering prompt, courteous, respectful service to every taxpayer, every time. And, integrity - striving to administer the tax laws fairly, consistently, and impartially.

The above statements are what I strive to live up to everyday as Taxpayer Advocate for Maine Revenue Services/DAFS and the State of Maine.