

MAINE STATE LEGISLATURE

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PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
MAINE REVENUE SERVICES
P.O. BOX 1060
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ADMINISTRATIVE & FINANCIAL SERVICES

RICHARD W. ROSEN
COMMISSIONER

BRUCE R. LIVINGSTON
TAXPAYER ADVOCATE

July 27, 2016

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

Senator Earle L. McCormick
Representative Adam A. Goode
Joint Standing Committee on Taxation
100 State House Station
Augusta, ME 04333-0100

State Tax Assessor Jerome D. Gerard
Maine Revenue Services
PO Box 1060
Augusta, ME 04332-1060

Dear Governor LePage, Co-Chairs McCormick and Goode 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

cc: Members of the Joint Standing Committee on Taxation
Commissioner Richard W. Rosen, 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 black ink that reads "Bruce R. Livingston".

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

July 27, 2016

This report is due annually by August 1st as provided in PL 2011, c. 439, Section 4. 36 MRSA §151-C is enacted to read: (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."

Background of the Position

The Taxpayer Advocate (Advocate) position was created in 1995. The purpose/mission/role of the 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. I have been the Advocate since July 1997.

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.

Rather than refer to my first four annual reports that the reader is unlikely to have in front of them, I think it would be helpful to include herein some of the pertinent items from those reports so the reader will have that information.

Legislative changes by the One Hundred and Twenty-Fifth Legislature (PL 2011, c. 694) resulted in the following provision in 36 MRSA § 151-C, sub-§1 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. Chapter 694 amended PL 2011, c. 439 by adding "as an employee of the bureau."

The following is from PL 2011, c. 439, also effective July 1, 2012.

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.

This is my fifth annual report and much of it will be repetitious and may seem the same to those who may have recently reviewed my first four reports. That is due in part because I have been the Advocate for nineteen years and in part because the basic tax problems and situations affecting Maine taxpayers don't change a whole lot from year to year. Another reason is that I like what I have said before and see no reason to change the wording just for the sake of making a change. 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, excise tax, the former tax and rent (Circuitbreaker) program; the present Property Tax Fairness Credit and the Homestead Exemption. The Maine Residents Property Tax and Rent Refund "Circuitbreaker" Program was terminated as part of the 2013 State budget, PL 2013, c. 368, Pt L, §2 and was replaced by the refundable Property Tax Fairness Credit beginning with tax year 2013.

The Advocate works 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 (notices). In order to serve taxpayers, it is essential that the Advocate keep up to date on proposed, pending and enacted Maine tax law and with any procedural changes made by MRS.

The Advocate receives many telephone calls and a lot of communication regarding taxpayers who are experiencing problems with Maine tax situations. Taxpayer problems or concerns reach the Advocate from many different sources - taxpayers themselves, the Governor's Office of Constituent Services, Maine Legislators or their staff, the DAFS Commissioner's staff, staff for Members of Congress, taxpayer representatives, MRS staff (more than likely the Compliance Division) and the Office of the Federal Taxpayer Advocate.

The Advocate reviews tax matters referred to him, discusses the case with staff from the applicable tax division if need be and makes any suggestions or recommendations that he thinks are appropriate. Since the Advocate is an office of one, logistically it is not possible for the Advocate to take over the management of a case. Nonetheless, depending

on the complexity of the situation and the facts involved, the Advocate may spend a lot of time involved with some cases. The Advocate is not a step in any appeals process.

When working with the Compliance Division trying to resolve a tax situation, usually the collection of a tax debt that is legally due, a taxpayer may ask, "Who else can I talk to about this?" Often, the Advocate is the "who else". I sometimes tell people that no one ever calls me because they're happy about their tax situation. I believe I understand the dynamics I deal with on a daily basis and trust I will always remember that to the taxpayer, the situation they are presently dealing with may well be the most important thing in their lives at that time. However, I can only review the case and advise the taxpayer utilizing the provisions of Maine tax law as a basis. Unless there is a compelling reason to do something different, I strive to be consistent with collection/compliance practices in the way cases are treated, as governed by the provisions of Maine tax law.

From 36 MRSA §151-C (2)(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).

In addition to the Commissioner of DAFS hiring the Taxpayer Advocate, another provision of PL 2011, c. 439, duties and responsibilities of the Advocate, calls for the Advocate to identify legislative changes that may be appropriate to mitigate problems in areas in which taxpayers have problems in dealings with MRS. Two of the three items I proposed in my July 30, 2012 report were incorporated into LD 988, An Act To Amend the Tax Laws. Part A addressed the issuance and renewal of resale certificates and Part C-9 addressed the sales tax against certain casual sales.

The other area I addressed in 2012 concerned the interest rate charged by the State in tax matters. I also mentioned interest in my 2013 and 2014 reports. Title 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%. I commented that with many interest bearing accounts in banks or credit unions yielding interest at the rate of ½%, although I did 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? At this point, I don't think the interest rate is going to change.

Items of concern and possible legislative changes in the **2013 report** involved the **taxation (sales tax) of adaptive equipment** to make a vehicle handicapped accessible and the **taxation (income tax) of pensions**, primarily pensions earned in another state by someone who then becomes a Maine resident and a Maine taxpayer.

Adaptive Equipment

I was contacted in early 2013 by a friend of a person who is a quadriplegic as a result of an accident several years ago. The friend was concerned about the sales tax the person

had to pay when they purchased and registered a van that had been previously modified and made handicap accessible by someone else before the person purchased it. The 2013 session of the Legislature addressed the situation with **LD 1370, An Act To Exempt from Sales Tax the Sales of Adaptive Equipment To Make a Vehicle Handicapped Accessible**. LD 1370 was Passed To Be Enacted on June 27, 2013, but was held over to the next session. The Act became law on January 12, 2014 and took effect on July 1, 2014, PL 2013, c. 442, enacting **36 MRSA §1760, sub-§95 (sales tax exemptions)**, sales of certain adaptive equipment, reading “sales to a person with a disability or a person at the request of a person with a disability of adaptive equipment for installation in or on a motor vehicle to make that vehicle operable or accessible by a person with a disability who is issued a disability plate or placard by the Secretary of State pursuant to Title 29-A, section 521.”

Adaptive equipment had been exempt from the motor vehicle excise tax (36 MRSA §1483 (15) since enacted by the One Hundred and Twenty-Third Legislature in 2007. The recently completed legislative session amended §1483 (15) to also exempt from the excise tax the same adaptive equipment that is installed in for hire vehicles. Interestingly, there was no companion exemption from the sales tax.

However, the LD 1370 sales tax exemption from 2013/2014 extends only to that equipment sold directly to a disabled person or to a person at the request of a person with a disability. It did not address the situation where the adaptive equipment was installed on a vehicle previously for someone else. Thus, LD 1370 does not apply to the disabled Maine taxpayer who purchased an already adapted vehicle.

In earlier reports, I queried might the provisions of LD 1370 be tweaked so that when a disabled person purchases an already modified vehicle, they would pay Maine sales tax on only the price of the vehicle and not on the price of the adaptive equipment? This might involve some record keeping and perhaps research on the part of the disabled person to ascertain the price of the vehicle and of the adaptive equipment, but the effort would likely be worthwhile if they were able to be exempt from paying sales tax on the adaptive equipment. At the present Maine sales tax of 5½%, the savings would be \$1,100 on a \$20,000 conversion. So far, there have been no further modifications.

A situation has recently come to my attention where a Maine taxpayer has the specific problem that I described above. The taxpayer purchased an expensive wheelchair van for transportation of the taxpayer's disabled child. Even though the taxpayer had information detailing the cost of the adaptive equipment for the factory built wheelchair accessible vehicle and provided it to the DMV, the taxpayer was advised that they had to pay sales tax on the entire purchase price because the law only covers adaptations made after the vehicle is purchased. I am not aware of any legislation proposed during the last legislative session to address the situation.

Pensions

In recent years there has been a lot of interest from former military personnel advocating that military pensions be exempt from Maine income tax. A \$6,000 exemption was implemented several years ago followed by the \$10,000 exemption for tax years beginning with 2014. The good news for military retirees is that for tax years beginning on or after January 1, 2016, benefits received under a military retirement plan, including survivor benefits, are fully exempt from Maine income tax.

Another area of concern I have mentioned in my earlier reports involves the Maine taxation of retirement income from other states. Taxpayers have moved to Maine and have become Maine residents and taxpayers. They receive a pension earned in another state where, as with State of Maine employees and educators, a portion of it has already been taxed in the other state. Governor LePage, Maine Legislators and others have been contacted by taxpayers concerning the Maine taxation of their pensions earned and taxed in another state, but received now as Maine residents.

The issue has been brought to my attention from several directions including correspondence in early 2013 entitled "double taxation on Mainers receiving pension from Massachusetts" from a Massachusetts (MA) retirees organization. They were looking for assistance from Maine legislators in perhaps drafting legislation to address the fact that some pensioners who have paid state income tax on their earnings in the state where they earned it, are now Maine residents and now have to pay Maine income tax on the pension they receive.

In responding to the various inquiries, I explain that the situation would be the same for a Maine taxpayer with a Maine State pension who moves to MA, they would have paid Maine income tax on a portion of their retirement contribution while earning it in Maine and would pay tax to MA on the Maine pension they receive if they become a MA resident. In other words, the same taxable income situation in MA that a MA resident moving to Maine would have here. I don't profess to know how much a MA resident pays to MA when the money is earned.

In my **2013 report**, I queried, with an apparent larger number of MA residents moving to Maine or thinking of doing so, might this be the sort of legislation that would encourage residents from other States to move to Maine? It was and LD 2242, An Act To Prevent Double Taxation of Retirement Benefits from Other States, was presented to the Legislative Council, but was not accepted, either initially or on appeal.

LD 1142, An Act Regarding the Taxation of Out-of-State Pensions was presented during the recent legislative session. The Summary explained that "this bill avoids double taxation of certain employee contributions to retirement benefit plans made in other states by exempting from Maine income tax the portion of retirement benefits attributable to the taxpayer's contribution to an employee retirement plan or an individual retirement account that was taxed by another jurisdiction." Information available earlier indicated that LD 1142 was carried over to any Special or Regular Session of the 127th Legislature.

The bill was addressed during the Second Regular Session of the 127th Maine Legislature but nothing came of it and it died, perhaps because of its fiscal impact.

Reciprocity becomes an issue when discussing a possible income tax exemption for those who move to Maine with pensions earned in another state. Other than Maine residents who move to Massachusetts (MA) and become MA residents, LD 1142 would not have resolved the issue for Maine retirees who move to a state that taxes pension benefits, it would only have resolved the issue for individuals who move to Maine from another state.

Since the earlier inquiries focused on MA taxpayers moving to and becoming Maine residents, I researched the issue a couple of years ago. I found that MA does grant an income tax exemption for retirement plan income from another state received by a MA resident if the other state grants reciprocal treatment to retirees from MA living in the other state. I have not researched reciprocity laws of any other states. As noted above, because of reciprocity between Maine and MA, LD 1142 would have benefitted Maine residents who move to MA and become MA residents. Certainly LD 1142 would have positively affected MA residents and residents of other states who move to Maine, but how many Maine residents moving to other states would still be faced with double taxation of their Maine pension benefits? I also wonder how many Maine residents move to MA. I imagine that far more MA residents move to Maine or at least would want to if they did not have to pay Maine income tax on their MA pensions.

Included in Governor LePage's Tax Reform package presented to the 127th Maine Legislature, LD 1019, were several proposals affecting the Maine income tax and pensions.

Section K-17 proposed to repeal 36 MRSA § 5122, sub-§ 1, ¶G, as amended by PL 2011, c. 240, §30, an addition to federal adjusted gross income for pick-up contributions paid by the taxpayer's employer on the taxpayer's behalf to the Maine Public Employees Retirement System. Section K-17 did not become law as part of LD 1019.

Section K-19 proposed, for tax years beginning on or after January 1, 2016, a full exemption from Maine income tax of benefits received under a military retirement plan, including survivor benefits. This proposal became law, LD 1019, Part DD, Section DD-10.

In Section K-19, Governor LePage also proposed increasing the present pension deduction amount of \$10,000, excluding military retirement benefits, and reduced by the total amount of the individual's social security benefits and railroad retirement benefits paid by the United States, to \$15,000 for tax years beginning in 2016. For tax years beginning on or after January 1, 2017, but before January 1, 2020, pension deduction amount means the pension deduction amount applicable to the preceding tax year increased by \$5,000. For tax years beginning on or after January 1, 2020, pension deduction means \$35,000. This proposal did not become law.

Do I have any items of concern and possible legislative changes this year? Not to the extent of the last few years where changes have been implemented or at least addressed. However, one possible change I was taking a look at was how tax liens are handled. At this point I do not know if any change I might propose would require legislation or merely a policy change or modification by MRS.

Tax Liens

As with other years, the Advocate continues to be contacted by taxpayers reporting that their credit rating is being 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 for some seven years, usually seven years after release of the lien. 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 the 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. If appropriate, the Advocate issues a To Whom It May Concern (TWIMC) statement over the Advocate's signature indicating that the tax lien provides an inaccurate representation of the taxpayer's Maine tax obligation and recommends that any negative effect caused by the filing of the tax lien be removed from the taxpayer's credit history and credit reports. Since 2008, the Advocate has issued more than forty-five such statements. They seem to have been successful since several taxpayers have contacted the Advocate to advise that the statement helped to improve their credit situation.

However, more and more taxpayers ask about having a tax lien "withdrawn" like the IRS does. In my experience, taxpayers sometimes have the mistaken idea that when a tax debt has been paid and the lien has been released, they can simply go to a registry of deeds where a lien is recorded and physically remove it. Years ago, before electronic filing, that would have meant physically tearing the lien out of the book where it had been entered. I explain that doesn't happen, that a lien is like a deed to your house or a mortgage, that it is there in the registry forever, although later filed documents might modify it.

As an example, a lien was recorded in the registry of deeds on May 17, 2013 in Book 11345, Page 36. The debt was paid, a release of tax lien was issued and was recorded in the registry on January 14, 2014 in Book 12109, Page 209. Before electronic filing, a notation would be made in the margin of the filed lien, referencing the book and page of the release and vice-versa. With electronic filing, an entry is still made in the registry records referencing the release.

In recent years, the IRS has implemented a "fresh start" program. As one might imagine, many taxpayers who have a Maine income tax problem also have a federal income tax

problem. A February 2011 announcement from the IRS stated, "In its latest effort to help struggling taxpayers, the Internal Revenue Service today announced a series of new steps to help people get a fresh start with their tax liabilities."

And, "the IRS will also modify procedures that will make it easier for taxpayers to obtain lien withdrawals. Liens will now be withdrawn once full payment of taxes is made if the taxpayer requests it. The IRS has determined that this approach is in the best interest of the government."

How does the IRS program work? The taxpayer files a Form 12277, Application for Withdrawal of Filed Form 668(Y), Notice of Federal Tax Lien, and checks the appropriate boxes from a list of reasons for requesting withdrawal of the federal lien.

An IRS withdrawal notice, Form 10916A, states, "the proper official, in the office where the Notice of Federal Tax Lien was filed on MM/DD/YR, is authorized to update the records to show the withdrawal of the notice of lien for these taxes and additions." So far as I know, this simply means cross-referencing the withdrawal to the lien. There are many lien releases, but not many IRS "withdrawals" recorded in the Kennebec County Registry of Deeds. I checked the records in the Kennebec Registry a few months ago and found several hundred releases and nine withdrawals. Three of the withdrawals affected one taxpayer and two affected two taxpayers. Thus, effectively, there were only five taxpayers involved with withdrawals and hundreds whose liens were simply released.

Since my TWIMC statement seems to work well, at present I do not plan to pursue implementation of something similar to what appears to be a rather complex federal lien withdrawal procedure.

In one recent instance, a father contacted me because his credit was being adversely affected by a State of Maine tax lien filed in his county registry of deeds. The father has a son with the same first name, but with a different middle initial. The tax lien is against the son, but the credit reporting companies are not distinguishing between the two and the lien appears on the father's credit reports. The matter was complicated by the fact that from time to time the son has resided with his father at his father's home and that is why that address is on the Maine tax lien.

I reviewed MRS' records and it was clear that the lien was placed against the son. I issued a TWIMC statement describing what I had found, that John M. Doe (father) is a different individual and has a different Social Security number than John E. Doe (son) and that any credit report that lists John M. Doe as owing an income tax debt to the State of Maine is incorrect and does not accurately represent the facts of the matter. In other words, the tax lien has absolutely nothing to do with John M. Doe. It was thus my recommendation that any negative effect toward John M. Doe caused by the tax lien against John E. Doe be removed from John M. Doe's credit history and credit reports.

Each week I receive telephone calls, emails, letters and referrals on most anything imaginable, many having to do with Maine taxes and MRS, but some having nothing at

all to do with the Advocate position or with MRS. I seem to be, or am at least thought to be, a knowledgeable source of information and answers. I review and answer whatever inquiries I can and forward the others to the appropriate entities such as an MRS Division, another State agency or the federal Taxpayer Advocate.

Much of the Advocate's work is done on the telephone. I maintain a notebook to keep a record of voicemail that is received. This has proven to be invaluable as it works a lot better than pink call slips, especially since some recorded telephone messages can run to a minute or more. Plus, it provides a useful record of calls made to the Advocate.

The next time will not be the first time that a taxpayer calls and says they called before and left me a telephone message. "Well, I'm afraid you did not because I keep a record of all such calls and if you happened to call, you did not leave a message."

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 responds to much of the correspondence.

During the King and Baldacci Administrations, the Advocate would draft responses and the response would usually be sent by the DAFS Commissioner or Deputy Commissioner. With the LePage Administration, the Advocate usually responds directly to the inquiry. Effective July 1, 2012, while the Advocate continues to respond to inquiries regarding specific tax issues, the Office of Tax Policy within MRS responds to correspondence regarding administration of tax policy.

Examples of situations handled by the Taxpayer Advocate since the July 30, 2015 annual report.

As I have mentioned before, I trust I will always remember that to the taxpayer who contacts me, the tax situation they are presently dealing with may well be the most important thing in their lives at that time. Oftentimes, their tax problem is only the tip of their socioeconomic iceberg.

In my 2015 report I said that of the tax situations we have dealt with over the past year, based purely on the number of instances, perhaps the one with the most contact and concern was the change in the **Property Tax Fairness Credit** from 2013 to 2014. Effective with tax year 2013, the Maine Residents Property Tax and Rent "Circuitbreaker" Program, commonly called tax and rent, was replaced by the Property Tax Fairness Credit (PTFC). Governor LePage and MRS received many inquiries regarding the demise of the Circuitbreaker (tax and rent) program. Since it was a tax policy issue, Michael J. Allen, Ph.D., Acting Deputy Commissioner of Finance and Associate Commissioner for Tax Policy, responded on behalf of the Governor. Dr. Allen

explained that the circuitbreaker program had been terminated and replaced by the PTFC program.

Nonetheless, I received a lot of correspondence and telephone calls regarding the PTFC program, mostly from taxpayers inquiring about their program benefits. Whereas at the end of the circuitbreaker program, the maximum benefit was \$1,600, for 2013 the maximum benefit under the PTFC program was \$400. Taxpayers' concerns were addressed in LD 1751, An Act to Provide Property Tax Relief to Maine Residents that was passed by the Legislature and approved by Governor LePage on April 17, 2014. The new law was effective for tax year 2014 and the maximum credit for a Maine resident was increased to \$600, \$900 if either spouse is at least 65 years old. The credit stayed the same for tax year 2015.

Anyone applying for a credit under the PTFC program must file a Maine income tax return. Since there was a separate application for the circuitbreaker, many did not have to file a Maine income tax return before. For the most part, I referred those who contacted me about the circuitbreaker and the new Property Tax Fairness Credit to the Income Tax Division. From my vantage point, they did a fine job responding and explaining the termination of the tax and rent program and the details of the new program. I did answer some inquiries myself and thus I became aware of the concerns taxpayers were expressing about the PTFC program. I received very few inquiries during the 2015 tax filing season regarding the PTFC program, most likely I imagine because it was the third year of the program and taxpayers and tax preparers have become more familiar with it.

The difference between the 2013 and the 2014, 2015 PTFC. For 2013 it looked like many PTFC participants had little or no income since their Social Security benefits that represented a significant portion of their annual income were not included in the benefit calculation. Similar to the circuitbreaker program, since the calculation of a taxpayer's 2014 and 2015 PTFC benefit includes the taxpayer's Social Security benefits, the 2014 and 2015 PTFC credit is based on a broader measure of income than a taxpayer's Maine adjusted gross income (that does not include Social Security).

As I mentioned last year, although my sample was a small one, I think it generally indicated the concerns that taxpayers have. A typical example was a taxpayer who had received \$400 for several years under the circuitbreaker, received \$300 under the 2013 PTFC program and \$47 in 2014. Some went from \$300 or \$400 in 2013 to \$0 because of Social Security benefits being included in the PTFC calculation.

According to information provided by MRS, from 2010 through 2012 there were 108,674; 109,094 and 99,659 applicants for the circuitbreaker program. By contrast, 84,907 applied for the PTFC in 2013, 61,437 applied in 2014 and 54,511 have applied so far in 2016 (2015 tax year).

Whereas from 2010 through 2012 general circuitbreaker applicants received an average benefit of \$492, \$498 and \$528, PTFC applicants received an average benefit of \$271 in

2013, \$276 in 2014 and \$279 in 2015. Although many that came to my attention did not receive the circuitbreaker maximum of \$1,600, many received \$800 or \$600 or \$400.

The total amount of circuitbreaker refunds from 2010 through 2012 was \$41,956,012; \$43,019,807 and \$42,170,207. By contrast, PTFC refunds totalled \$21,666,507 in 2013, \$14,771,342 in 2014 and \$13,836,142 so far for the 2015 tax year program.

Educational Opportunity Tax Credit

More questions regarding Educational Opportunity Tax Credits seemed to come my way since August 2015 than in earlier years.

Perhaps some history of the program might be helpful. The credit for educational opportunity is a component of the Job Creation Through Educational Opportunity program that was enacted during the first regular session of the 123rd Maine Legislature in 2007. The purpose of the program was to provide an income tax credit for education-related costs for Maine residents who obtained an associate or bachelor's degree from a Maine college, junior college or university and who, after graduation, lived, worked and paid taxes in Maine. The credit was available to qualifying graduates and employers making eligible education loan payments. Initially, a student did not have to obtain a degree from the institution in which they originally enrolled, "so long as all course work toward the degree is performed at accredited Maine junior colleges or universities." In other words, during the first years of the program, all academic work had to be done at a Maine institution of higher learning.

The program was modified in 2014 as part of LD 1718, An Act To Improve the Job Creation Through Educational Opportunity Program. The stated primary purpose of LD 1718 was to consolidate under the tax laws the provisions of statute that govern the determination of the income tax credit for educational opportunity. At the time, the relevant provisions were contained in M.R.S. Title 20-A (Maine education law) and Title 36 (Maine tax law). An "Opportunity program participant" became a "Qualified individual". The definition of a qualified participant/individual was changed so that an individual who transferred from outside the State to an accredited Maine school after December 31, 2012 and who had earned no more than 30 credit hours outside the State was now eligible for the program if all other eligibility criteria were met.

Any governmental program has established certain criteria to determine if an applicant qualifies for program benefits. Despite the change in the law in 2014, some students still did not qualify for the then existing program. On April 16, 2016, Governor LePage approved LD 1657, An Act To Simplify and Expand the Educational Opportunity Tax Credit, effective for tax years beginning on or after January 1, 2016. The law allows a qualified individual who earned a bachelor's or associate degree from an accredited Maine community college, college or university after December 31, 2007 but before January 1, 2016 to be eligible for the educational opportunity tax credit regardless of the number of transfer credits earned at a non-Maine institution. Under the old law, an

individual who earned more than 30 credits from a non-Maine institution prior to 2016 did not qualify for the credit.

Also, the program now allows residents of Maine who are employed at least part time in a position on a vessel at sea to be eligible for the tax credit so long as all other program qualifications are met.

Sales Tax

We get a few sales tax questions. Some have queried as to when the sales tax will go back to 5% since the increase to 5½% was supposed to be temporary.

Effective October 1, 2013, Sales Tax Rates were temporarily increased from October 1, 2013, through June 30, 2015. The general sales tax rate of 5% increased to 5½%. The 7% tax rate on the rental of living quarters increased to 8%. Later legislation retained the general sales/use tax rate of 5½% for purchases made on or after July 1, 2015 and the 8% rate on the casual rental of living quarters through December 31, 2015 when it increased to 9% effective January 1, 2016.

The "temporary" sales tax of 5½%, effective October 1, 2013, was originally scheduled to expire or sunset on June 30, 2015. However, it was permanently extended by the 2014 biennial budget. The general sales tax rate remains 5½%, the tax on meals and prepared foods stayed at 8% and the tax on lodging increased to 9% on January 1, 2016.

Retiring to Maine

Governor LePage receives inquiries from time to time from people who are thinking of retiring or moving to Maine and want to know about taxes in Maine. I receive such inquiries as well. Some have also inquired about colleges, hospitals, benefits to retiring in Maine and unemployment. I respond with a brief treatise focusing on their specific questions. Some of the areas that may be mentioned are:

Income Tax

As in most states with an income tax, the computation of Maine income tax is based on the taxpayer's federal adjusted gross income as reported on the taxpayer's federal tax return. In general, all income that is subject to federal tax is subject to Maine tax. Maine has a progressive income tax, from 5.8% to 7.15% of taxable income, so a taxpayer's income tax rate does increase as income rises. The 7.15% tax rate becomes effective at \$37,500 for single individuals and married persons filing separately and at \$75,000 for married individuals and surviving spouses filing joint returns.

Social Security benefits are not subject to Maine income tax. Maine has a \$10,000 per person **pension** exemption. Each recipient of state, federal or military pension benefits may deduct up to \$10,000 of pension income included in their federal adjusted gross income. Except for military pensioners, the \$10,000 exemption is reduced by any Social

Security and railroad retirement benefits received. For tax years beginning on or after January 1, 2016, benefits received under a military retirement plan, including survivor benefits, are fully exempt from Maine income tax.

Maine Individual Income Tax - Property Tax Fairness Credit Eligible Maine taxpayers may receive a portion of the property tax or rent paid during the tax year on the Maine individual income tax return whether they owe Maine income tax or not. If the credit exceeds the amount of the individual income tax due for the tax year, the excess amount of credit will be refunded to the taxpayer. Who is eligible for the Property Tax Fairness Credit? Homeowners or renters who were Maine residents during any part of the tax year; owned or rented a home in Maine during any part of the tax year and lived in that home during the year as a primary residence; paid property tax or rent on the primary residence in Maine during the tax year; and meet certain income and property tax and/or rent paid limitations during the tax year.

Sales Tax Maine has a 5½% sales tax on the value of all tangible personal property and taxable services. The sales tax is 8% on the value of prepared food and on the value of liquor sold in licensed establishments. Sales tax is 9% on the value of rental of living quarters in any hotel, rooming house or tourist or trailer camp. Unlike many states, there are no local or county sales taxes in Maine.

Property Tax Real estate taxes vary from town to town depending on the tax base and valuation. The Maine Municipal Association has a web site at <http://www.memun.org>. Accessing that site will give a taxpayer property tax information on Maine's over 400 municipalities.

Depending on a homeowner's situation, Maine has several real estate exemptions a taxpayer might benefit from. **Homestead Exemption Program** - the just value of \$10,000 of the homestead of a permanent resident of Maine if the home is the permanent residence and has been owned for the preceding 12 months. An eligible homestead is eligible for an additional exemption of \$5,000 of the just value of the homestead for property tax years beginning on April 1, 2016 and of \$10,000 of the just value of the homestead for property tax years beginning on or after April 1, 2017. An application must be filed on or before April 1 with the municipality where the property is located.

Qualifying veterans are entitled to an exemption of up to \$6,000 of just value of real estate provided the veteran is a legal resident of the State of Maine, served during a federally recognized war period, has notified the town assessor of his claim before April 1 and has reached the age of 62.

Automobile Taxes - Excise Tax

The motor vehicle excise tax is a tax for the privilege of operating a vehicle on Maine roads. The money collected from the annual excise tax stays with the town or city and is used for municipal purposes such as road repair. Along with the property tax, the excise tax is a major source of municipal revenue, generating some \$200 million a year.

The excise tax paid by a person registering a motor vehicle is based on the maker's list price for the vehicle (commonly called the MSRP or manufacturer's suggested retail price). The excise tax on a new vehicle is 24 mills per each \$1,000 of the MSRP and decreases to 4 mills for the sixth and following years. Thus, if a taxpayer registers a new car with an MSRP of \$20,000, the excise tax would be \$480. When the same car is six years old, the excise tax would be \$80 and would remain the same for each subsequent year.

Gas Tax The tax on gasoline is \$.30 per gallon.

I usually end my response by stating that I hope this information is helpful to the inquirer regarding their question such as "what are the taxes that your state has?"

Some have asked if there are any benefits to retiring in the beautiful State of Maine. I expect that my response and the information provided gives them a look at what the various tax benefits might be.

Also, some have mentioned that they are interested in moving to Maine because of the beauty of the four seasons and the smell of the air. I usually mention something about recalling similar comments that have appeared in various periodicals, things like a tax survey cannot measure the intangible assets of Maine's culture and community, that I would expect Maine to rank toward the top in both categories. And, Maine's tourism people might add a few more such as our magnificent lakes and Atlantic coastline, four seasons, clean air and recreational facilities, to name a few.

Schedule C

We have had a few situations that involve federal Schedule C (Form 1040), Profit or Loss From Business. Schedule C is filed with a taxpayer's federal income tax return detailing financial information from their business. The profit or loss is reported on line 12 ("Business income or (loss). Attach Schedule C or C-EZ"). The State Tax Assessor does not have to accept the federal adjusted gross income (FAGI) figure as reported on a taxpayer's federal income tax return. When a Maine income tax return is filed, State law provides that the Assessor may review the return and conduct such audits or investigations as he believes necessary to determine the correct tax liability.

Some taxpayers seem to utilize what might be termed inventive accounting practices. When tax compliance issues are recognized, MRS takes whatever steps are appropriate to identify and to collect any taxes that may be due. This might include reviewing a taxpayer's federal income tax return including Schedule C. Upon audit, a taxpayer will often argue that the IRS accepted their income tax return(s), so why won't MRS? In some cases, MRS requires additional information from a taxpayer in the areas of profit or loss from their business. Requesting additional information is not an unusual occurrence.

Tax Problems

As before, on a regular basis, we receive inquiries from Governor LePage's Office of Constituent Services and Legislative aides regarding constituents who contact the Governor or a Legislator about some tax problem they are having. These are promptly addressed either by myself or, if the question/issue pertains to something better answered by Income Tax, Sales Tax, Compliance or Property Tax, by someone from those Divisions.

Consumer Protection

A component of the Office of the Attorney General is the Consumer Information and Mediation Service of the Consumer Protection Division. A citizen or taxpayer with a concern can fill out a General Complaint or Question Form with the Consumer Mediation staff. From time to time, when the complaint or question appears to deal with some aspect of what MRS does, Consumer Mediation staff will send it to me for help, advice or direction, or to request that someone from MRS respond. Issues have included such things as the sales tax on the long-term rental of a hotel room, overpayment of municipal property tax, sales tax on buy one get one free deals, withdrawal of a tax lien and the difference in sales tax between a retailer's coupon (deduct value of the coupon) and a manufacturer's coupon (sales tax on the full sales price).

Tax Violations Hotline

Governor LePage and MRS receive correspondence from concerned citizens regarding possible Maine tax violations, mostly income tax or sales tax. We thank them and mention that the information provided is very helpful in reviewing and addressing possible tax violations.

We point out that MRS takes these matters very seriously and reviews and investigates any information regarding possible tax fraud that is brought to its attention. However, we also point out that due to strict Maine law regarding taxpayer confidentiality, MRS cannot disclose any details of any possible investigation or the result. Even though someone has provided information to MRS, the same confidentiality law pertains to them as well. In addition, the identity of anyone providing information is also kept confidential.

Income Tax Refunds

It seems that every year, mostly at income tax filing time in March and April the Governor and State Legislators receive inquiries from constituents regarding how some individuals who are living on welfare are able to get yearly income tax returns in amounts of several thousands of dollars, how someone can get a refund on income taxes that they don't pay, someone who receives benefits from State assistance and welfare programs.

We respond and explain that the average Maine State income tax refund is something like \$550 per year, that in most cases a taxpayer receives a State refund because they had

more withheld from their earnings than they owed when they filed their Maine income tax return. And, some taxpayers may participate in federal tax programs like Earned Income Tax Credit (EITC) that can provide a refundable income tax credit to low and middle income taxpayers of up to \$6,000 if they have three or more children.

Also, there are currently two personal credits at the State level that are refundable - the Child Care Credit (CCC) and the Property Tax Fairness Credit (PTFC). The CCC is refundable up to \$500. In order to claim the CCC, one has to have some earned income. That is based on federal tax law. Effective with tax year 2014, the maximum PTFC is \$600 and \$900 for a Maine resident over age 65. Therefore, it is possible a taxpayer could receive a State check for up to \$1,400 for a tax year. Like the repealed circuitbreaker (tax and rent) program that had a benefit of up to \$1,600, the PTFC is designed to assist homeowners and renters with their property tax or rent.

I point out that other than the aforementioned programs, a taxpayer cannot receive an income tax refund that is more than their withholding and, to the best of my knowledge, an individual who depends solely on welfare benefits would not be eligible for CCC, but may qualify for the PTFC provided they meet the eligibility requirements.

Some mention many programs such as subsidized housing, SNAP, TANF and free medical. I explain that those programs are administered by DHHS and questions regarding them will be addressed by someone from DHHS. Sometimes I work with the Constituent Services Coordinator at DHHS on issues of mutual concern. Before any benefit is awarded in any program like SNAP (food supplement) or TANF (Temporary Assistance for Needy Families) an applicant has to meet program eligibility requirements, usually income, assets and liabilities that are detailed on a personal financial statement much like the one that MRS utilizes for tax issues. Also, eligibility requirements can vary from program to program so someone might qualify for one program, but not another.

We mention that MRS and DHHS take these matters very seriously. MRS reviews and investigates any information regarding possible tax fraud that is brought to its attention in regard to income tax refunds. No doubt DHHS does the same with benefit programs administered by DHHS. As noted earlier, in the case of MRS, due to strict Maine law regarding taxpayer confidentiality, MRS cannot disclose any details of any possible investigation or the result even to those who have provided information to MRS about possible tax fraud. We may suggest that if the inquiring constituent suspects that someone is defrauding the State by receiving benefits they are not entitled that they contact the Tax Violations Hotline at MRS or DHHS.

We also get what I would classify as general calls where someone has a federal, not State, tax question, thinks I'm the federal Taxpayer Advocate or is looking for information or department that has nothing to do with MRS. I'm usually able to point these folks in the right direction if I don't know the answer.

Offset of income tax refunds

The issue of the offset of federal income tax refunds to Maine or the offset of State income tax refunds is one that arises every year. Taxpayers who reach the Advocate are not pleased that their federal or State refund has been offset to a debt they have with MRS. I explain the process and that in my experience it is unlikely MRS will refund any of the offset. If appropriate, I point out to taxpayers that a paragraph on the Demand to Pay Notice that has been sent to them (by certified mail) contains language that federal law authorizes Maine Revenue Services to submit any outstanding state income tax liability to the U.S. Department of the Treasury for offset of any federal (IRS) income tax refund to which they would otherwise be entitled.

In similar fashion, if a liquidated debt is owed to an agency of the State, that agency may certify the debt to the State Tax Assessor. Pursuant to State law, the Assessor will then offset any Maine income tax refund to which the taxpayer is entitled to the certifying agency. I explain that any issues regarding the offset, including a claim of injured spouse, are between the taxpayer and the agency and do not involve MRS.

MRS sends the taxpayer a Disposition of Tax Refund Notice that explains what has happened. The notice contains the following paragraph:

“If you do not agree that you owe the debts against which the tax refund was set-off you have the right to request a hearing. You have 60 days from the receipt of this notice to request a hearing. If you wish to request a hearing, call or write the agency receiving the setoff at the address or telephone number below.”

Wage levies and bank levies are sometimes brought to my attention, usually by the affected taxpayer or by someone they have contacted. A common complaint is that the levy came out of the blue with no notice that it might happen. As with the federal offsets, if appropriate, I point out to taxpayers that a paragraph on the Demand to Pay Notice that has been sent to them (by certified mail) contains a statement that if payment in full is not postmarked or received within 10 days from the date they receive the notice, MRS will impose an additional penalty of 25% of the tax due and “may: (a) levy (seize), and if necessary sell, their non-exempt property to cover the unpaid tax and the expenses of the levy:...” “Property subject to levy includes any right, title and interest held in property whether real or personal, tangible or intangible, such as **salaries, wages, commissions, bank accounts, and real estate.**” (**emphasis added**)

When discussing a levy with a taxpayer, I indicate the above notice language and point out that the demand for payment notice was sent by certified mail. Often, a taxpayer will state they never received the notice. Sometimes the notice has been returned by the US Postal service as unclaimed. In that case, the notice will then be sent by regular mail to the taxpayer at their last known address. More often than not, though, in checking certified mail records, I find that the notice was signed for by the taxpayer.

When working with a taxpayer to try to resolve a tax problem, especially when setting up a payment plan, the Compliance Division will ask the taxpayer to fill out a **Personal Financial Statement (PFS)**, basically a listing of a taxpayer's assets and liabilities. Sometimes taxpayers complain about the need for a PFS in order to set up a payment plan. I explain that a PFS is a very important document since it provides a lot of taxpayer information for MRS to review in order to arrive at a fair and reasonable payment plan. In my experience, some taxpayers have tried to hide their "toys", things like ATVs, motorcycles and snowmobiles that carry significant monthly payments to the bank or credit union. Often, the taxpayer feels a "need" to pay on those to the detriment of paying on a tax bill.

Estimated Payments When appropriate, I advise taxpayers with a Maine income tax problem, especially those who are self-employed and think they will owe money at filing time, to consider making estimated payments during the year. I point out that it would seem to be easier for financial planning to make four periodic payments during the year in April, June, September and January, rather than be faced with a large amount due in April that includes interest and penalties if payment is not made by April 15th. I recommend that they discuss the possibility of estimated payments with their accountant and in the meantime to work with MRS to try to resolve the pending matter in a mutually satisfactory manner.

We don't seem to receive many complaints about the **excise tax** on motor vehicles anymore. When we do, I explain that the motor vehicle excise tax in Maine presently generates more than \$200 million in annual revenue to municipalities and that the revenue their municipality collects from the annual excise tax is used for municipal purposes such as local road maintenance, construction and repair. Since we have the figures from the Property Tax Division, we mention the amount of excise tax collected by their municipality. Even in a small town, excise tax revenue may be more than several hundred thousand dollars. When I've communicated with taxpayers about excise tax, they're usually surprised to learn that the money does not go to the State.

Often when I'm discussing a Maine tax debt with a taxpayer, usually an income tax debt, I find that they know little about the Maine income tax return they have filed. They relate to me that their accountant did the return or it was done electronically through a tax filing program.

In difficult economic times, some taxpayers **withdraw** money from their **pension** or other retirement plans to live on. Although the standard proposed withholding is 20% federal and 5% for the State, in many of the situations that reach me there has been no withholding at all. More often than not, this creates a major tax problem when payment of income tax becomes due in April. In most cases, the taxpayer is advised to work with the Compliance Division to try to resolve the matter.

Real Estate Withholding (REW)

We receive a few inquiries each year from out-of-state taxpayers who do not understand REW. Real estate withholding became effective on January 1, 1992 and applies to any Maine real property transferred after that date. Every buyer of Maine real property must withhold state income tax at the rate of 2½% from the total consideration paid (\$50,000 or more) for the property if the seller is not domiciled in Maine as of the date of closing. The seller should have been provided with a copy of a Notification to Seller(s) of Withholding Tax Requirement when their property was sold.

This is not a tax per se. REW is similar to a W-2 on earnings. If the seller has a recognized gain relating to the sale of their Maine property, they are required to file a Maine income tax return for the taxable period when the sale occurred regardless of the sale price of the property. The REW amount is claimed as an estimated tax payment on the taxpayer's Maine income tax return. REW withholding helps to ensure that a seller of Maine real estate will pay the appropriate amount of income tax to the State of Maine on the sale. The 2½% of the sale that is withheld at the time of the closing is sent to MRS and is credited to a taxpayer's Maine income tax account as an estimated tax payment awaiting their timely filing of a Maine income tax return for the year in which the property was conveyed.

In my experience, unfortunately, I sometimes think that whoever handles the transaction or conducts the closing does not do a very good job in explaining the REW process to the seller. Some sellers have thought it is their Maine tax on the sale and do not file a return. When these transactions are reviewed by MRS, some sellers are found to owe more while some would have actually been entitled to a refund if they had filed a timely Maine income tax return.

Summation

This report is a bit longer than my other four, but I think the material included in it is helpful to the understanding of what I do as Taxpayer Advocate. It represents a pretty good cross section of what I have worked on over the past year. It is certainly interesting to me and I hope to those reading the report.

In my now nineteen years as Taxpayer Advocate the job pretty much remains the same. Taxpayers have tax problems with anything and everything - refunds, assessments, bank and wage levies, offsets, tax liens, payment plans, non-filer issues, communication issues, issues with benefit programs such as PTFC, inattention to their tax matters.

A lot of this may be repetitious from earlier reports, but I liked what I said then and my earlier thoughts are still applicable. As I've said before, I spend much of the day on the telephone and on the computer reviewing and analyzing taxpayer situations. The matters that reach me are rarely boring and working on them is often like putting a puzzle

together. 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 don't often see the easy cases, I get the tough ones. And, as the Governor's Office of Constituent Services staff, the DAFS Commissioner's staff and Legislative Aides can attest, I am often Paul Harvey with "*The Rest of the Story.*"

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 circumstances warrant, the Advocate may recommend that compliance/collection staff modify a payroll deduction plan or 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.

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?

In the end, what I try to accomplish is to carry out the duties and responsibilities of the Advocate to the best of my abilities, to do the right thing that is fair to both the taxpayer and to the State of Maine according to Maine tax law.

Bruce R. Livingston
Taxpayer Advocate

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