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GOVERNOR

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MAINE REVENUE SERVICES  
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ADMINISTRATIVE & FINANCIAL SERVICES

ALEXANDER E. PORTEOUS  
COMMISSIONER

BRUCE R. LIVINGSTON  
TAXPAYER ADVOCATE

August 1, 2018

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

Senator Dana L. Dow  
Representative Ryan Tipping  
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 Dow and Tipping 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,

A handwritten signature in blue ink that reads "Bruce R. Livingston".

Bruce R. Livingston  
Taxpayer Advocate

cc: Members of the Joint Standing Committee on Taxation  
Commissioner Alexander E. Porteous, 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 blue ink that reads "Bruce R. Livingston".

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

**August 1, 2018**



This report is due annually by August 1<sup>st</sup> 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 1<sup>st</sup> 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.

**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.

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 communications 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 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 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. However, the Advocate is not a step in any appeals process.

After conducting a thorough review in any case presented to me, if I think that an alternative remedy or decision/determination would be appropriate, I do not hesitate to make such a suggestion.

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 believe I understand the dynamics I deal with on a daily basis and trust I will always remember that, although to the taxpayer, the situation they are presently dealing with may well be the most important thing in their lives at that time. As an advocate, 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, it is important 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 addressed in 2012 concerned the interest rate charged by the State in tax matters. Title 36 MRSA §186, Interest, provided 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 three percentage points. Until a recent change, the interest rate had been 7% since 2010. Pursuant to legislation enacted in 2017, LD 1551, approved by Governor LePage on June 14, 2017, for calendar years beginning on or after January 1, 2018, the annual calculation of the rate of interest became the prime rate rounded up to the next whole percent plus one percentage point (it had been 3 percentage points), effectively reducing the interest rate to 6%. 36 MRSA §186

Another provision of LD 1551 provided that for assessments made on or after August 1, 2017, existing tax lien provisions were changed to increase the State's ability to be first in line in priority ahead of other creditors for payment of a tax debt. 36 MRSA §175-A, sub-§1-A.

LD 1551 also added a new sales tax exemption - certain sales by civic, religious or fraternal organizations, including an auxiliary of such an organization, sales of prepared food at a public or member-only event, except when alcoholic beverages are available for sale at the event. The exemption is limited to the first 24 days during which such sales are made in a calendar year and does not apply to sales made at private functions such as weddings. 36 MRSA §1760, sub-§101

Items of concern and possible legislative changes in the 2013 and other reports involved the taxation (income tax) of pensions, primarily military pensions and pensions earned in another state by someone who then becomes a Maine resident and a Maine taxpayer.

In recent years interest from former military personnel advocating for military pensions to be exempt from Maine income tax has increased. 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 was 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 mentioned in 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.

In my 2013 report, I queried, with an apparent larger number of Massachusetts 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 126<sup>th</sup> 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.” LD 1142 was carried over to any Special or Regular Session of the 127<sup>th</sup> Legislature where it was addressed during the Second Regular Session of the 127<sup>th</sup> Maine Legislature but nothing came of it and it died, perhaps because of its fiscal impact.

Similar legislation, LD 935, was presented during the First Regular Session of the 128<sup>th</sup> Maine Legislature. The Summary explained that “this bill exempts from Maine income tax certain income from out-of-state pensions in order to avoid double taxation of that income.” It was reported out as ought not to pass and it died. I am not aware of any other proposal being presented to the 2018 session.

Each week I receive telephone calls, emails, letters and referrals on many topics having to do with Maine taxes and MRS, but some having nothing at all to do with the Advocate position or with MRS. 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.

For example, a recent inquiry regarding the abatement of municipal property taxes was referred to the Property Tax Division that has a lot of experience in that area.

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.

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.

At the conclusion of each legislative session, the different divisions of MRS put together a legislative summary listing the various bills that were put forth during the session that might affect their particular area of Maine tax law - income tax, sales and use tax, property tax and compliance. These summaries are helpful to me in preparing my annual report because they serve as an outline

as to what happened during the session, what bills were presented and did they become law, were defeated or carried over to the next session.

Let's take another look at LD 1551, An Act to Amend the Maine Tax Laws, presented at the First Regular Session of the 128<sup>th</sup> Legislature. LD 1551 was approved on June 14, 2017 by Governor LePage and became Chapter 2011 of the Public Laws. Taken from the Legislative Appraisal Form that is prepared for each bill - "Maine Revenue Services prepares one or more bills each year that proposes administrative and technical changes to various existing provisions of Maine law, primarily in Title 36. The purpose of LD 1551 is to make various improvements and clarifications that are substantive in nature across tax types (e.g. new sales tax exemption) or affecting general tax administration, but that are also consistent with existing tax administration and other tax-related Executive Department Functions."

Among other things, as mentioned on page 3 of this report, LD 1551 changed tax lien provisions to increase the State's ability to be first in line in priority ahead of other creditors for payment of a tax debt and effectively reduced the annual interest rate to 6% for underpayments and overpayments, reduced from the 7% that had been in place since 2010.

In Part A, LD 1551 also added a tax information confidentiality exception to allow disclosures by MRS to the Revenue Forecasting Committee in order to make available relevant tax information in support of the committee's statutory duties.

In Part B, LD 1551 provided that all equipment and supplies, whether medical or otherwise, are exempt from sales tax only when used in the diagnosis or treatment of human diabetes.

In Part D, LD 1551 prohibited for tax years beginning on or after January 1, 2017, married individuals filing separate income tax returns from claiming the property tax fairness credit (PTFC). The change is consistent with a similar restriction under the sales tax fairness credit.

**Other Legislation** LD 1629, An Act to Protect the Elderly from Tax Lien Foreclosures, a Governor's bill, was carried over from the 1<sup>st</sup> Legislative Session and is still pending.

LD 1882, An Act to Exempt from Taxation Sales to Certain Nonprofit Organizations Supporting Veterans, a Governor's bill introduced in the 2<sup>nd</sup> Legislative Session, was enacted as 36 MRSA §1760 sub-§102 and takes effect October 1, 2018.

### **Continuing areas of concern and examples of situations handled by the Taxpayer Advocate since the August 1, 2017 annual report**

It is important to 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.

Any governmental program has established certain criteria to determine if an applicant qualifies for program benefits. Not everyone qualifies for every program administered by MRS or the State whether it was the former Circuitbreaker Program, the current Property Tax Fairness Credit, the Educational Opportunity Tax Credit Program, the Homestead Property Tax Exemption or any other program. I am sometimes contacted by taxpayers who are upset that their application for a program has been adjusted or denied by MRS. Upon review, I usually discover that the taxpayer simply did not meet the requirements of the program and thus is not entitled to program benefits.

**Sales Tax** Maine loses millions of dollars a year on online sales. Under Maine tax law, Maine residents who purchased items for use in Maine from retailers who did not charge sales tax such as many out-of-state mail order and internet sellers are required to report and pay the sales tax with their income tax return, but fewer than 10% do so.

Very important decisions will be forthcoming in response to the US Supreme Court's recent *Quill* issue ruling in *South Dakota v Wayfair* making it easier for states to collect sales tax from online sellers. The June 21<sup>st</sup> ruling means that states can now pass laws requiring out-of-state businesses to collect sales tax from its residents and to remit the sales tax to the state. Similar legislation, LD 1405, An Act To Require Remote Sellers To Collect and Remit Sales and Use Tax on Sales into Maine, was passed in Maine last year, effective October 1, 2017. MRSA §1951-B

In a written statement, Maine Finance Commissioner Alexander E. Porteous stated, "On its face, the court's ruling seemingly validates Maine law." And, "It will be important to further study the ruling, determine the extent to which South Dakota's statute aligns with our own, and prepare any changes to Maine law that may be necessary."

For several years Congress has been working on a legislative solution to the national sales tax problem through the Marketplace Fairness Act (MFA). Governor LePage has expressed his support for this federal legislation and has urged the Maine Congressional delegation to support it. The MFA has moved very slowly and so far as I know was nowhere near resolution when the Supreme Court issued its recent decision. I imagine that states without any sales tax had little or no incentive to help push the MFA along.

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.

**Amnesty** Every once in a while Governor LePage, a State legislator or I receive an inquiry as to when the State is going to have another amnesty program. Sometimes it is from a taxpayer who participated in a previous amnesty program and has since run up a large tax bill, usually income tax. An “amnesty” program ended in November 2003. To participate in the 2003 Tax Amnesty Program a taxpayer had to meet the eligibility requirements, complete and file the required forms and pay the amount of tax and one-half of the interest that was due. The remaining interest and all penalties were waived.

In 2009, another amnesty type program came along, the Tax Receivables Reduction Initiative (TRRI) that ran from September 1 through November 30, 2009 for returns filed by September 1, 2009. To successfully participate, a taxpayer had to pay all of the tax, all of the interest and 10% of the penalties that were due by September 1, 2009. The other 90% of the penalties were waived. The revenue goal of the 2009 TRRI program was \$9,500,000 and it raised \$16,933,000.

There was another TRRI program in 2010, from September 1 through November 30, 2010. It included a Short Term Initiative for liabilities assessed as of December 31, 2009. To successfully participate, a taxpayer had to pay all of the tax, all of the interest and 5% of the penalties. The other 95% of the penalties were waived. For the 5-Year Initiative for liabilities assessed as of June 30, 2005 (old debt), to successfully participate, a taxpayer paid all of the tax plus 5% of the interest and 5% of the penalties. 95% of the interest and 95% of the penalties were waived. The 2010 TRRI program raised revenue of \$9,253,000, falling a bit short of its goal of \$9,500,000.

I am not aware of any significant discussion regarding another “amnesty” program since the 2010 TRRI program ended in November 2010.

**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 seven years after release of the lien usually. 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. In some cases, 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” 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 roughly fifty 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.

**Income Tax** For tax years beginning on or after January 1, 2017, the top tax bracket threshold was increased from \$37,500 to \$50,000 for single individuals and married persons filing separate returns; from \$56,250 to \$75,000 for unmarried individuals or legally separated individuals who qualify as heads of household; and, from \$75,000 to \$100,000 for married taxpayers filing joint returns and surviving spouses.

LD 390, a budget bill, approved by Governor LePage on July 4, 2017, repealed the 3% income tax surcharge approved by the November 8, 2016 statewide referendum on taxable income in excess of \$200,000.

**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 for an additional exemption of \$10,000 of the just value of the homestead for property tax years beginning on or after April 1, 2017 (total exemption of \$20,000). An application must be filed on or before April 1 with the municipality where the property is located.

In a situation brought to my attention a few years ago, a Maine town correctly denied a homestead exemption where the long-time homeowner's permanent address had been changed to a nursing home and title to the property had been conveyed to a trust.

In another case, a taxpayer was unhappy that the town would not grant a homestead exemption. It turned out that the taxpayer and spouse owned another home in another town and the spouse had been granted a homestead exemption on that home.

**Divorce** If a divorce is brought to my attention, the usual situation is that the taxpayers have a joint Maine income tax obligation. As such, they are both individually and/or jointly liable for the entire amount and MRS (and the IRS) may take appropriate action to collect the outstanding tax liability from either or both of them. The entire tax debt might be collected from only one of the taxpayers if that is the way it plays out.

Oftentimes a taxpayer will provide court information that points out that in many divorce proceedings it is common for one spouse to be held responsible for either federal and/or state taxes. Often misunderstood, however, is the fact that the court order regarding an income tax debt affects only the parties of that court action. The tax responsibility provisions of divorce decrees are often not followed. However, the court order does not change the relationship between the divorcing parties and any outstanding creditors, such as MRS or the IRS.

It is important to note that if the taxpayer ends up paying some of the joint obligation, even if a court decree orders otherwise, their remedy is to take the necessary steps to enforce the court order in their divorce decree against their ex-spouse, to return to court to seek to have the ex-spouse held

in contempt and for reimbursement for what the taxpayer has had to pay. Hopefully, counsel will have advised the taxpayer of this.

From my experience with those who call, it is not widely understood that a divorce decree, even if it says so, does not absolve one spouse from a joint Maine income tax obligation incurred with the now ex-spouse. Taxpayers often think they are in the clear regarding taxes because the court order states something such as “the parties were divorced by a judgment and pursuant to that judgment, defendant was obligated to pay a tax debt to the IRS and to the Treasurer of the State of Maine and to hold plaintiff harmless for the same.”

**Automobile Taxes - Excise Tax** Every year, correspondence is brought to my attention from Maine taxpayers who are unhappy with Maine excise tax law. Usually they argue that the excise tax should be based on the sale price of the vehicle, not the Manufacturer’s Suggested Retail Price (MSRP).

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 \$233 million a year statewide according to the latest available figures.

The excise tax on motor vehicles was first enacted by the Maine Legislature in 1929. As it does now, the law at that time stated the excise tax paid by a person registering a motor vehicle was based on the vehicle’s Manufacturer’s Suggested Retail Price (MSRP). 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.

At present, all owners of the same type of vehicle pay the same excise tax whether they register the vehicle in Fort Kent, Bangor or Kittery, which is fair as the tax is based upon the value of the vehicle (similar to the real estate tax). This would not be the case if the excise tax was based on a vehicle’s sale price as high volume dealers are able to sell vehicles at lower prices.

There has been some thought given to reducing the mill rate in the early years of ownership and lengthening the number of years before the mill rate reaches 4 mills, but as yet there has not been any legislation enacted to change the present law.

In the recent past, proposals, including one from Governor LePage, to significantly reduce the mill rate applied in the early years of ownership to remove the burden the excise tax imposes on owners of new vehicles and lengthen the time to when the rate reaches 4 mills have not made it through the legislative process.

LD 707, An Act To Base the Motor Vehicle Excise Tax on the Purchase Price of the Motor Vehicle was presented during the legislative session in 2017. According to the Summary, “this bill changes

the method of computing the excise tax that is levied on motor vehicles and camper trailers registered in the State.” And, “this bill requires that the excise tax for all motor vehicles and camper trailers be based upon the purchase price of the vehicle.” LD 707 did not pass.

There was another bill, LD 1687, An Act To Amend the Laws Governing the Calculation of Excise Tax on Automobiles, before the 2018 legislative session. There was a hearing on it on January 25<sup>th</sup> before the Taxation Committee. The bill would have required that the excise tax on motor vehicles and camper trailers be based on the purchase price of the vehicle for the first year and on the MSRP for all succeeding years.

For example, if the MSRP was \$40,000 and the purchase price was \$35,000, under the current law the excise tax would be \$960 whereas under the proposed law it would have been \$840. For the second year, the excise tax would be \$700 under each law and would be the same as the current law for each subsequent year.

The bill came out of Committee as Ought Not to Pass and is now dead. Legislative records indicate that similar unsuccessful bills have been presented at legislative sessions over the past fifteen years.

Taxpayers are usually surprised to learn that excise tax funds do not go to the State, but rather all revenue derived from motor vehicle excise taxes is used by local municipalities to pay for local governmental programs and services, such as road maintenance, construction and repair.

As noted above, according to the latest available figures, the annual municipal revenue derived from the excise tax exceeds \$233 million dollars. Looking around the State - Fort Kent received \$1,137,061; Washburn \$256,419; Calais \$563,497; Bangor \$6,229,094; Ellsworth \$1,578,056; Farmington \$889,749; Auburn \$3,819,659; Augusta \$3,961,325; Rockland \$1,073,333; Wiscasset \$621,793; Fryeburg \$547,935; Topsham \$1,813,657; Portland \$11,163,187; York \$3,142,797 and Kittery \$1,751,648.

**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.

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 I receive a call regarding a taxpayer’s reluctance to provide a PFS. Some express the feeling that it is too personal and they should not have to provide it. In my experience, some taxpayers have tried to hide their “toys”, such things as ATVs, motorcycles, snowmobiles, expensive vehicles and the like that carry significant monthly payments to the bank or credit union. Often, the taxpayer feels a “need” to pay on these to the detriment of paying on a tax bill.

A PFS is part of the process in setting up a payment plan. It is a very important document since it provides a lot of taxpayer information for MRS to review be able to analyze a taxpayer's ability to pay on their tax obligation in order to arrive at a fair, reasonable and affordable payment plan.

**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 to a State agency 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 or a State agency. 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 MRS 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 and Bank Levies** These 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. If appropriate, as with the federal offsets, 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 a bank levy is mentioned, to me that means that the case is a long way down the collection road. Bank levies are sort of a last resort when the taxpayer has not made adequate voluntary payments on a debt they owe. MRS staff take whatever steps are appropriate to try to collect taxes that may be due. That may well include levying a bank account when an account is identified with the delinquent taxpayer's name on it. Often, there are multiple names on the account. With certain reservations, the monies in an account are fair game for a creditor of any of the account holders.

In regard to a delinquent taxpayer, M.R.S. § 176-A, Levy upon property, provides in part that "the State Tax Assessor may collect the tax and any additional amount sufficient to cover the expenses of the levy, by levy upon all property belonging to that person..." Property "means any right, title and interest held in property by a delinquent taxpayer, whether real or personal, tangible or intangible, located within this State." Thus, if a taxpayer has full right to any of the monies in a bank account and could withdraw any or all of it at any time, the State has the same right to levy that account.

**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. It would 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.

Often when 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.

## **Summation**

The material included in this report is representative of what I have done since July 2017 and each year, and speaks to the issues that the Advocate deals with on a regular basis.

Putting the report together this year has been a bit different from other years because as I'm preparing the report, the legislative session has not yet ended. What was to be the short session this year and now the special session is taking longer than last year's long session, is still ongoing and many important issues are as yet undecided.

One of those is conformity. The conformity bill is LD 1655, An Act To Update References to the United States Internal Revenue Code of 1986 Contained in the Maine Revised Statutes. From the bill's summary, "The bill updates references to the United States Internal Revenue Code of 1986 and amendments (the Code) as contained in the Maine Revised Statutes, Title 36 to refer to the Code, as of December 31, 2017..." "The bill primarily affects the State's income and estate tax laws.

For Background, "This legislation is submitted annually by the Department of Administrative and Financial Services to update the references to the United States Internal Revenue Code in Title 36. The Maine Legislature must annually review amendments to the Code since the last conformity date to determine whether it wants to conform to some or all the federal changes that impact Maine's tax laws."

In remarks before the Taxation Committee, I believe that MRS Executive Director (State Tax Assessor) Jerome Gerard testified that the 2017 individual income tax, corporate income tax, fiduciary income tax and estate tax returns were designed with the expectation that the Maine Legislature would substantially conform to the Code as of December 31, 2017 and that MRS is not aware since the enactment of the State income tax in 1969 when a Maine Legislature did not enact a conformity bill.

By way of comparison, the 127<sup>th</sup> Legislature's conformity bill, LD 1583, An Act To Provide for Tax Conformity and Funding Methods, was approved by Governor LePage on March 10, 2016. As emergency legislation, it took effect when it was approved. The 126<sup>th</sup> Legislature's conformity bill, LD 1705, An Act To Conform the Maine Tax Laws to the United States Internal Revenue Code, was approved by Governor LePage on March 6, 2014 and as emergency legislation took effect when it was approved.

In my twenty-one years as Taxpayer Advocate the job 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, inattention to their tax matters and often avoidance of their tax problems.

State and federal tax laws can be complicated. The complexity of Maine tax law certainly makes my job interesting. Sometimes difficult too, but manageable. Although all tax law is mostly under Title 36 - income tax, property tax, sales tax and compliance, each of those components has its own laws to work with. Take Maine income tax returns as an example. Every line, box and schedule on Maine income tax returns is there because of a specific provision in Maine tax law. MRS has made the forms and associated instructions as simple as humanly possible while still ensuring that the instructions cover the gamut of tax situations and the forms elicit the necessary information. Sales tax is another example - there are now more than 100 exemptions to Maine sales tax and each legislative session usually brings bills seeking exemption for something else.

It often takes a while to do a full and necessary review of any tax matter that is referred to me. It would be nice if there were only a button or two to push to bring up an entire picture of what has happened in any particular case, but it doesn't work that way. Depending on how old the case is, it can take several hours to review everything that I feel is necessary in order to get a complete

picture of the matter, the past, present and where the case may be going. There is no legislation that would change that.

The schedule/application for the current Property Tax Fairness Credit (PTFC) and the Sales Tax Fairness Credit take up four pages in the Maine Resident Individual Income Tax Booklet whereas the former Maine Residents Property Tax and Rent Application (circuitbreaker) was a separate two page document. Because of their age or income many participants in the circuitbreaker program did not have to file a Maine income tax return to receive benefits whereas now they need to file a Maine income tax return to participate in PTFC.

Much of this information may be repetitious from earlier reports, but remains applicable. 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 usually 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 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 Taxpayer 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 the provisions of Maine tax law.

Bruce R. Livingston  
Taxpayer Advocate

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