

# MAINE STATE LEGISLATURE

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PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
MAINE BOARD OF TAX APPEALS  
134 STATE HOUSE STATION  
108 SEWALL STREET  
AUGUSTA, MAINE  
04333-0134  
[www.maine.gov/boardoftaxappeals](http://www.maine.gov/boardoftaxappeals)

WILLIAM J. KELLEHER  
Chairman

EDWIN A. HEISLER  
Board Member

RICHARD A. NASS  
Board Member

ROBERT A. CREAMER  
Chief Appeals Officer

31 December 2014

Joint Standing Committee on Taxation  
C/o Legislative Information  
100 State House Station  
Augusta, Maine 04333-0100

Dear Senator McCormick and Representative Goode,

Please find attached the annual report of the Maine Board of Tax Appeals, describing the activities of the Board during 2014. I would be happy to answer any questions you may have concerning this report and supply you with any additional information you may require.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. A. Creamer", written over a horizontal line.

Robert A. Creamer  
Chief Appeals Officer



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Pursuant to 36 M.R.S. § 151-D(10), the following constitutes the second annual report of the Maine Board of Tax Appeals (the "Board"), describing the Board's operations during 2014. Please direct any questions concerning this report to the Board's Appeals Office at 134 State House Station, 108 Sewall Street, Augusta, Maine 04333-0134, or call 207-287-2866.

## 1. Overview

Effective July 1, 2012, the Board was established by the Legislature as an independent entity within the Department of Administrative and Financial Services to provide taxpayers with a fair system for resolving disputes with Maine Revenue Services ("MRS"). The Board is neither part of MRS nor subject to its control in any way. It consists of three Board members appointed by the Governor and confirmed by the Legislature. The members are supported by the Appeals Office staff, which includes the Chief Appeals Officer, two Appeals Officers and one Administrative Assistant.

The Board may hear appeals from decisions of MRS involving: (1) sales and use taxes; (2) income taxes; (3) the franchise tax; (4) the estate tax; (5) business taxes, such as the service provider tax and the insurance company tax; and (6) special taxes, including the cigarette and tobacco taxes. The Board is not connected with the Maine State Board of Property Tax Review and does not review property tax disputes.

The Board's appeals process is controlled by 36 M.R.S. § 151-D. Taxpayers may file an appeal with the Board after first requesting and receiving a decision on reconsideration from MRS, provided that there was at least \$1,000.00 in dispute at the time the taxpayer first requested reconsideration. Appeals are initially reviewed by one of the Board's Appeals Officers, who examines the evidence and testimony provided by taxpayers and MRS. Based on his or her examination, the Appeals Officer drafts a recommended decision which the Board considers when it meets to review the appeal and issue a final decision. The parties may submit written comments directly to the Board prior to its meeting and may also request that the Board allow them to speak at the meeting. After considering the recommended decision, the parties' comments, and, if allowed, the parties' oral statements, the Board members will vote on whether to uphold the recommended decision, modify it, return it to the Appeals Officer for additional consideration, or reject it and issue their own decision. The Board's decision may be appealed to Superior Court.

The Board is committed to ensuring the availability of due process and reaching a speedy, just, and inexpensive resolution to all appeals filed with it.

## 2. Recent Rulemaking Activity

Since its last annual report, the Board has made several amendments to Chapter 100 of its rules of practice and procedure. The amendments were made in two stages, with the initial, and more comprehensive, amendments being published for public comment on November 27, 2013. Comments were due by January 7, 2014, but none were received. This initial set of amendments was designed to bring Chapter 100 into compliance with recent legislative changes by: (1) lowering the threshold amount of tax, interest, and penalties required for appealing to the Board

from \$5,000 to \$1,000; (2) giving taxpayers 20 days from the filing of an appeal within which to request a conference with an Appeals Officer; and (3) allowing taxpayers to choose anyone they wish to represent them before the Board, not just attorneys. Additionally, based on the Board's experiences thus far and in response to suggestions from parties that have appeared before the Board, the amendments to Chapter 100 also: (1) changed the previous process for submitting documents, which called for simultaneous submissions by the parties, to one that uses a staggered set of submissions beginning with the taxpayer's; (2) explained in detail what information the Board would consider in an appeal; (3) created a detailed process for requesting a subpoena from an Appeals Officer; and (4) formalized the procedure for parties to orally address the Board. Finally, the initial set of amendments included a number of suggestions by the Appeals Office staff for clarifying the existing rules, correcting minor errors, and making the rules more uniform in format and terminology.

When the Board met on January 13, 2014, to approve the initial set of amendments, the Board members proposed two additional amendments to Chapter 100. The first was for the Board to retain the fee paid for an appeals conference in the event that the relevant appeal is withdrawn before the conference is held. The reason for this amendment was to reduce the probability that taxpayers will request a conference in an appeal where one is not likely to be necessary due to the high probability of settlement.

The second amendment was to clarify that: (1) when a party to an appeal requests that the Board Chair be recused, the Chair must designate another Board member who will determine whether or not the request shall be granted; and (2) that the Chair may also recuse himself or herself from an appeal whenever the Chair believes that such recusal is appropriate. This amendment was proposed in order to clarify the provisions on the recusal of Board members,

which had contained some language the Board found to be ambiguous. The additional amendments were published for public comment on February 5, 2014. Comments were due by March 14, 2014, but none were received.

The Board voted to approve the initial set of amendments and the two additional amendments on March 18, 2014. All of these amendments were approved by the Attorney General on March 24, 2014, and the amended version of Chapter 100 took effect on May 1, 2014, governing all appeals filed on or after that date. Both the current and the previous versions of Chapter 100 may be found on the Board's website at <http://www.maine.gov/boardoftaxappeals>.

### 3. Appeals

There were 23 tax appeals filed with the Board between January 1, 2014 and December 31, 2014. Taxpayers requested appeals conferences in 16 of those appeals.

The amounts of tax, penalties and interest at issue in the appeals filed with the Board break down as follows:

\$1,000 - \$5,000:	6
\$5,001 - \$50,000:	10
\$50,001 - \$100,000:	1
\$100,001 - \$200,000:	2
\$200,001 - \$500,000:	3
More than \$500,001:	1 (which was for more than \$1 million)
Total	23

The types of taxes at issue in the appeals that were filed with the Board in 2014 are:

Individual Income Tax:	15
Corporate Income Tax:	3
Estate Tax:	1
Sales/Use Tax:	4
Total:	23

The Board issued four written decisions in 2014. Three of these decisions were in appeals filed in 2013 and one of these decisions was in an appeal filed in 2014. The total amount of tax, interest and penalties at issue in those four appeals resolved by a Board decision was \$1,278,010. Two of these appeals were decided wholly in favor of MRS, and two decisions upheld but adjusted the underlying assessment issued by MRS. One taxpayer has appealed the Board's decision in favor of MRS to Superior Court. The Board currently has six of its decisions posted on its website in redacted form.

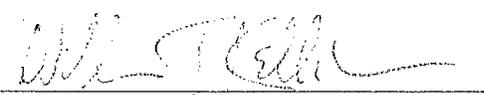
Of the remaining 22 appeals filed with the Board during 2014, 11 have been settled or otherwise resolved as a result of discussions between taxpayers, Board staff and MRS. The total amount of tax, interest and penalties at issue in those 11 appeals was \$466,750. Eleven appeals are still pending before the Board and the total amount of tax, interest and penalties at issue in those appeals is \$1,965,585.

A comparison of the appeals received and resolved by the Board in 2014 to those received and resolved in 2012 and 2013 is provided in the attached Addendum.

#### 4. Outreach

The Board has continued to engage in outreach to raise awareness of the Board and its mission to provide an efficient, just, and inexpensive resolution of tax appeals. The Chief Appeals Officer and the Appeals Officers have presented at the Maine Tax Practitioner Institute, the Maine Tax Forum, the Frank M. Carter Tax Institute at Husson University, and the Certified Public Accountant workshops at St. Joseph's College. Finally, the Board has remained in regular contact with the accounting and legal communities, providing them with notice of all Board meetings, rulemaking, and other activities.

Respectfully submitted by the Maine Board of Tax Appeals,



William J. Kelleher  
Chairman

Date: 12/24/2014

**Addendum**

Comparison of the appeals received and resolved by the Maine Board of Tax Appeals in 2014 to those received and resolved by the Board in 2012-2013:<sup>1</sup>

	2014	2012-2013
Total number of appeals filed:	23	30
Amounts at issue in appeals		
\$1,000 - \$5,000:	6	6
\$5,001 - \$50,000:	10	12
\$50,001 - \$100,000:	1	2
\$100,001 - \$200,000:	2	4
\$200,001 - \$500,000:	3	2
More than \$500,001:	1	4
Tax types		
Individual Income:	15	7
Corporate Income:	3	3
Estate :	1	2
Sales/Use:	4	14
Service Provider:		3
Abandoned Deposits:		1
Decisions issued:	4	9
Total amount at issue in those decided appeals:	\$1,278,010	\$1,638,927
Outcomes		
Assessment upheld:	2	5
Assessment cancelled:	0	2
Assessment adjusted:	2	2
Appeals settled:	11	14
Total amount at issue in those settled appeals:	\$466,750	\$2,006,311

<sup>1</sup> The Board held its first meeting in October of 2012, and the appeal data for the last three months of 2012 has been combined with the data for 2013.