

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

WILLIAM J. KELLEHER
Chairman

EDWIN A. HEISLER
Board Member

RICHARD A. NASS
Board Member

PAUL L. BOURGET
Chief Appeals Officer

Pursuant to 36 M.R.S. § 151-D(10), the following constitutes the fourth annual report of the Maine Board of Tax Appeals (the “Board”), describing the Board’s operations during 2016. 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 the Board’s Chief Appeals Officer, Paul Bourget, at 207-287-2862.

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 consists of three Board members appointed by the Governor and confirmed by the Legislature. Prior to creation of the Board, MRS conducted its own administrative tax controversy reviews. As a result of the creation of the independent Board, the Council on State Taxation awarded Maine a top rank on its 2013 Scorecard for Tax Appeals and Procedural Requirements.¹

The Board members are supported by the Appeals Office staff consisting of the Chief Appeals Officer, two Appeals Officers, and one Administrative Assistant. Prior to the cost-

¹ The Council on State Taxation (“COST”) Scorecard is described as a tri-annual summary of “the fairness of the states’ laws and regulations for state tax administration and appeal of state tax matters.” Only Maine and Ohio received perfect scores from COST in 2013.

neutral legislation creating the Board, the Appeals Office staff members performed tax conflict-resolution duties as employees of MRS.

2. Operation of the Board

The Board is committed to ensuring due process and to reaching a speedy, just, and inexpensive resolution to all appeals filed with it. The Board may hear appeals from MRS determinations 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 related to the Maine State Board of Property Tax Review and does not review property tax disputes, with the exception of Business Equipment Tax Reimbursement (BETR) and Business Equipment Tax Exemption (BETE) disputes.

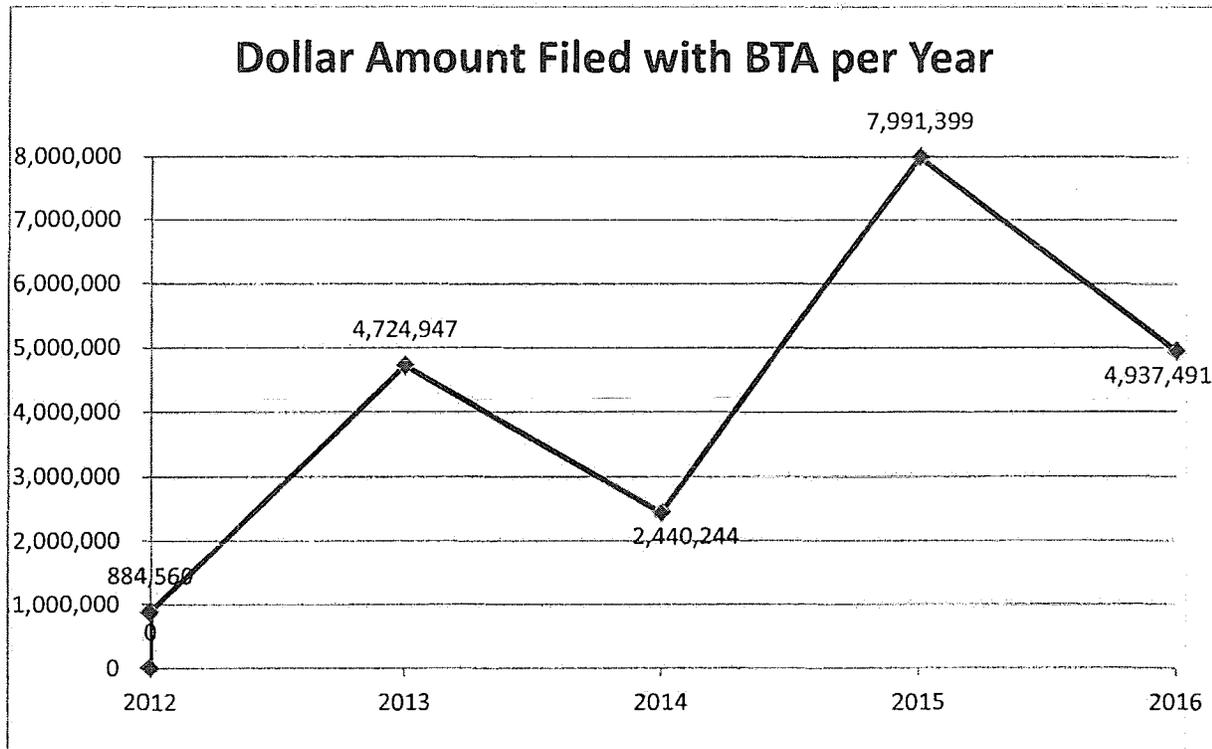
The Board's appeals process is controlled by 36 M.R.S. § 151-D. Taxpayers may file an appeal with the Board after first requesting and receiving a decision on reconsideration from MRS, provided that there was at least \$1,000.00 in dispute at the time the taxpayer first requested reconsideration. Appeals are initially reviewed by an Appeals Officer who examines the facts provided and the applicable law. 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 make an oral presentation at the meeting. After considering the recommended decision and the parties' comments and oral statements, the Board members vote to adopt the recommended decision as drafted, adopt it with modifications, return it to the Appeals Officer for further proceedings, or reject it and issue their own decision.

3. Appeals Filed in 2016

There were 21 tax appeals filed with the Board between January 1, 2016 and December 31, 2016. Taxpayers requested appeals conferences in 15 of those appeals. The amount of tax, penalties, and interest at issue in the appeals filed with the Board in 2016 was \$3,203,990, broken down as follows:

Less than \$5,000:	4
\$5,001 - \$50,000:	8
\$50,001 - \$100,000:	2
\$100,001 - \$900,000:	7
\$900,001 - \$1,000,000:	0
<u>More than \$1,000,001:</u>	<u>0</u>
Total	21

The dollar amounts of the cases filed with the Board are set forth on the following chart:



The types of taxes at issue in the appeals filed with the Board in 2016 are as follows:

Individual Income Tax:	11
Estate Tax:	2
Corporate Income Tax:	3
BETE/BETR:	1
<u>Sales/Use/Service Provider Tax:</u>	<u>4</u>
Total:	21

Of the 21 appeals filed in 2016, two have been decided by the board, seven have been settled or were otherwise resolved without written decision, and 12 remain pending.

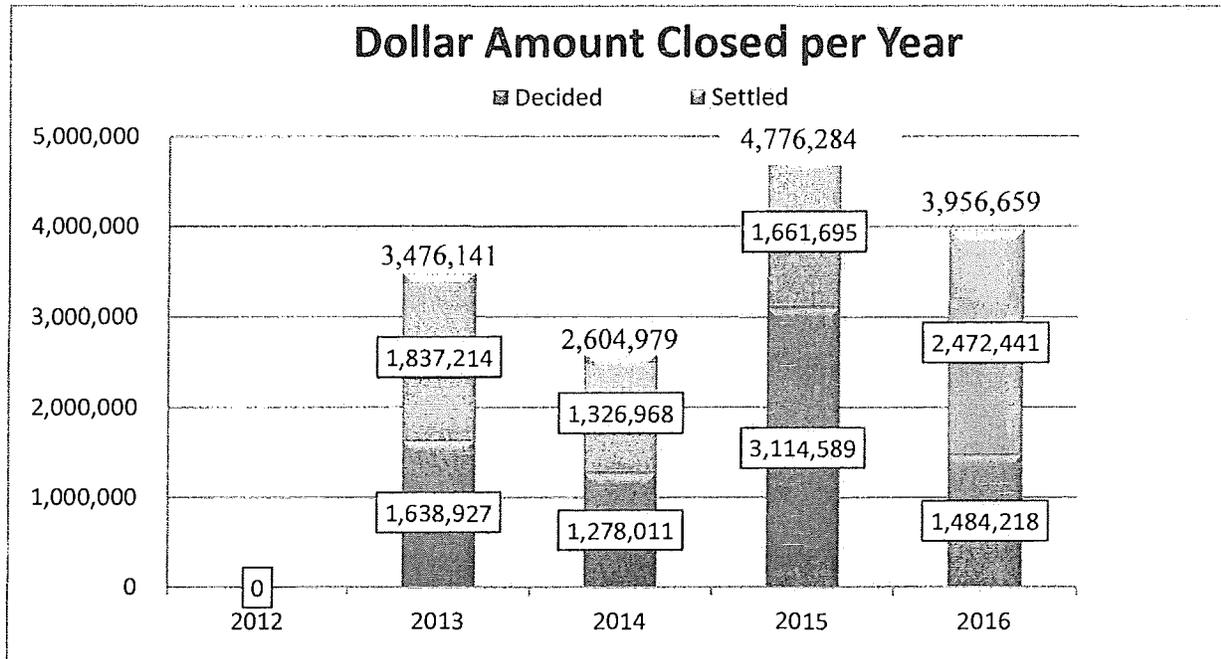
4. Board Decisions Issued and Cases Closed in 2016

The Board issued 11 written decisions in 2016. Nine of these decisions related to appeals filed in 2015 and two were for appeals filed in 2016. The total amount at issue in the 11 appeals resolved by Board decision was \$1,484,218. Of the 11 appeals decided by the Board, seven were decided wholly in favor of MRS and two were decided wholly in favor of the taxpayer. In the two remaining decisions, the Board abated the penalties contained in MRS's assessment in one case, upholding the underlying assessment as thus adjusted, and in the other found that the dollar amount in controversy was insufficient to provide the Board with jurisdiction to decide the merits of the appeal.

Also, 10 appeals totaling \$2,472,441 were settled or resolved between the parties without written decision by the Board. The types of taxes at issue in the 21 cases closed by the Board in 2016 are as follows:

Individual Income Tax:	8
Corporate Income Tax:	4
BETE/BETR:	1
Sales/Use/Service Provider Tax:	7
<u>Resale Certificate:</u>	<u>1</u>
Total:	21

Below is a summary by dollar amount of appeals decided by the Board and settled per year:



5. Appeals Pending Before the Board

There are currently 12 appeals pending with the Board totaling \$4,239,130. Each of these appeals was filed, in whole or in part, in 2016. The types of taxes at issue in these 12 appeals are as follows:

Individual Income Tax:	6
Corporate Income Tax:	1
Estate Tax:	2
BETE/BETR:	1
Sales/Use/Service Provider Tax:	2
Total:	12

6. Superior Court Review of Board Decisions

Decisions of the Board may be appealed to Superior Court. There was one appeal of a Board decision to the Superior Court in 2016. By comparison, there was one such appeal in

2015, two in 2014, and three in 2013. The status of these seven appeals to Superior Court is as detailed on the following chart:

	When Appealed	Board Decision	Appellant	Superior Court Status	Supreme Court Status
1	2013	Taxpayer	MRS	Decision for MRS, July 7, 2014	Dismissed by the Parties, August 29, 2014
2	2013	MRS	Taxpayer	Decision for Taxpayer, October 5, 2015	Decision for MRS, November 8, 2016
3	2013	Taxpayer	MRS	Decision for Taxpayer, June 30, 2016	Pending
4	2014	MRS	Taxpayer	Appeal withdrawn, July 6, 2015	N/A
5	2014	MRS	Taxpayer	Appeal withdrawn, October 9, 2015	N/A
6	2015	Taxpayer	MRS	Pending	N/A
7	2016	Taxpayer	MRS	Consent judgment for MRS, July 1, 2016	N/A

Of the seven cases listed above, only three have been fully litigated to a decision in the Superior Court. Regarding those three cases, the average length of time between the date of filing with the Board and the Board's decision was 7.6 months, while the average length of time between the date of Superior Court filing and Superior Court decision was 24.8 months.

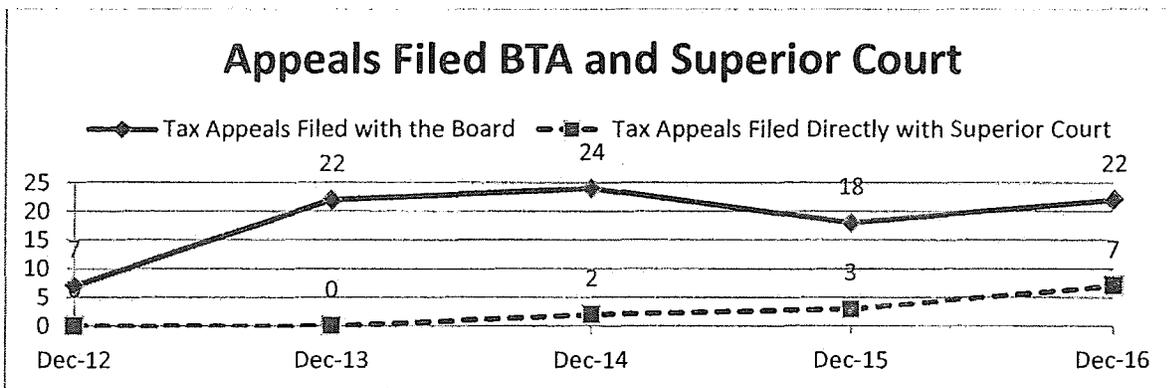
For all cases decided by the Board in 2016, the average length of time between the filing of the appeal and the Board decision was 7.4 months.

7. Direct Appeals to the Superior Court

Tax cases may be appealed directly to the Superior Court without having to go through the Board. In 2016, there was one group of seven cases appealed directly to Superior Court. The cases in the group have similar bases of assessment and have issues in common but have not technically been consolidated on one docket.

In 2015, there were three appeals to Superior Court directly from Maine Revenue Services determinations. Of these three direct appeals, two were filed by *pro se* appellants and were subsequently dismissed for failure of the appellants to comply with Superior Court requirements. Regarding the third direct appeal, the taxpayer’s attorney explained to the Board’s Chief Appeals Officer that the appeal was not filed with the Board because an appeal to the Maine Law Court was anticipated regardless of the outcome in Superior Court. That case remains pending in Superior Court.

In 2014, two cases were appealed directly to the Superior Court. One case was settled after two months and the other was settled after 16 months.



* The group of seven cases appealed to the Superior Court in 2016 have not been consolidated on one docket, despite their having similar issues and bases of assessment.

8. Public Interface

Every taxpayer eligible to appeal to the Board is so advised by MRS in the closing paragraph of the Reconsideration Decisions that it issues.

The Board maintains a website at www.maine.gov/boardoftaxappeals which contains information about the Board and the appeal process. Links to the Board’s website are located on the MRS and the DAFS websites. Additionally, the Board maintains redacted copies of its written decisions on its website at www.maine.gov/boardoftaxappeals/decisions to “make

available to the public redacted decisions that do not disclose the identity of a taxpayer or any information made confidential by state or federal statute.” 36 M.R.S. § 191(2)(YY). The format for citing the Board’s redacted decisions has been assigned by the University of Maine School of Law in the School’s judicially recognized Uniform Maine Citations (e.g., *Individual Taxpayer v. Me. Revenue Servs.*, BTA-2012-1 (Me. Bd. Tax App. Mar. 14, 2013)).

In 2016, the Board maintained an information booth at the Maine Tax Forum, at which members of the Board and the Appeals Office interacted with tax attorneys, accountants, preparers, and other practitioners. Also at the Forum, presenters discussed two topical Board decisions: BTA-2015-4 (Bd. Tax App. January 4, 2016) (Maine’s double income taxation of MePERS Rollover Distributions) and BTA-2015-6 (Bd. Tax App. Mar. 24, 2016) (forklifts incorrectly subjected to use tax at casual sale). The Forum was held at the Augusta Civic Center on November 2 and 3. As in prior years, each of the Board’s Appeals Officers and Board Members attended the 2016 Maine Tax Forum.

Respectfully submitted by the Maine Board of Tax Appeals,

Date: December 30, 2016

/s/ Paul L. Bourget
Paul L. Bourget
Chief Appeals Officer
Maine Board of Tax Appeals
207-287-2862
paul.bourget@maine.gov