

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

RICHARD A. NASS
Board Member

D. KELLEY YOUNG
Board Member

PAUL L. BOURGET
Chief Appeals Officer

December 29, 2017

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

RE: 2017 Annual Report of the Maine Board of Tax Appeals (BTA). 36 M.R.S. § 151-D(10).

Dear Senator Dow and Representative Tipping:

Please find attached the annual report of the Maine Board of Tax Appeals, describing the activities of the Board during 2017.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Bourget'.

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



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2017 ANNUAL REPORT OF THE MAINE BOARD OF TAX APPEALS (BTA)

Pursuant to 36 M.R.S. § 151-D(10), the following constitutes the annual report of the Maine Board of Tax Appeals (the “Board”) for calendar year 2017. Please direct any questions regarding 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, by cost-neutral legislation, 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, and is supported by an Appeals Office presently staffed by two Appeals Officers and one Administrative Assistant.¹ Prior to creation of the Board, MRS conducted its own administrative tax controversy reviews.

As a direct result of the creation of the independent Board, the Council on State Taxation (COST) awarded Maine a top rank on its 2013 Scorecard for Tax Appeals and Procedural

¹ Effective October 1, 2017, the Appeals Office lost one Appeals Officer position in the FY 2018-2019 Biennium Budget.

Requirements.² The existence of an independent tax dispute forum contributed to Maine's being one of only eight states to receive a letter grade of "A" on the scorecard in 2013, and one of only four states to receive an "A" in 2016.

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) individual and corporate income tax; (2) sales, use, and service provider taxes; (3) estate tax; (4) the franchise tax; (5) the insurance company tax; and (6) special taxes, including the cigarette, tobacco, potato, and mahogany quahog taxes. The Board's property tax jurisdiction is limited to appeals of Business Equipment Tax Reimbursement (BETR) and Business Equipment Tax Exemption (BETE) disputes. The Board is not related to the Maine State Board of Property Tax Review and does not review other disputes concerning property tax.

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 not less than \$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 submitted 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

² 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.

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 2017

There were 27 tax disputes filed with the Board between January 1, 2017, and December 31, 2017, in the total amount of \$2,251,756. Taxpayers filed and prosecuted their appeals without an attorney or other representative in eleven (41%) of those controversies, and Appeals Conferences were requested in seven cases (26%).³

Dollar amounts of appeals filed in 2017 ranged as follows:

Less than \$5,000:	16	(59%)
\$5,000 - \$50,000:	7	
\$50,001 - \$100,000:	1	
\$100,001 - \$900,000:	2	
\$900,001 - \$1,000,000:	0	
More than \$1,000,000:	1	
Total	27	

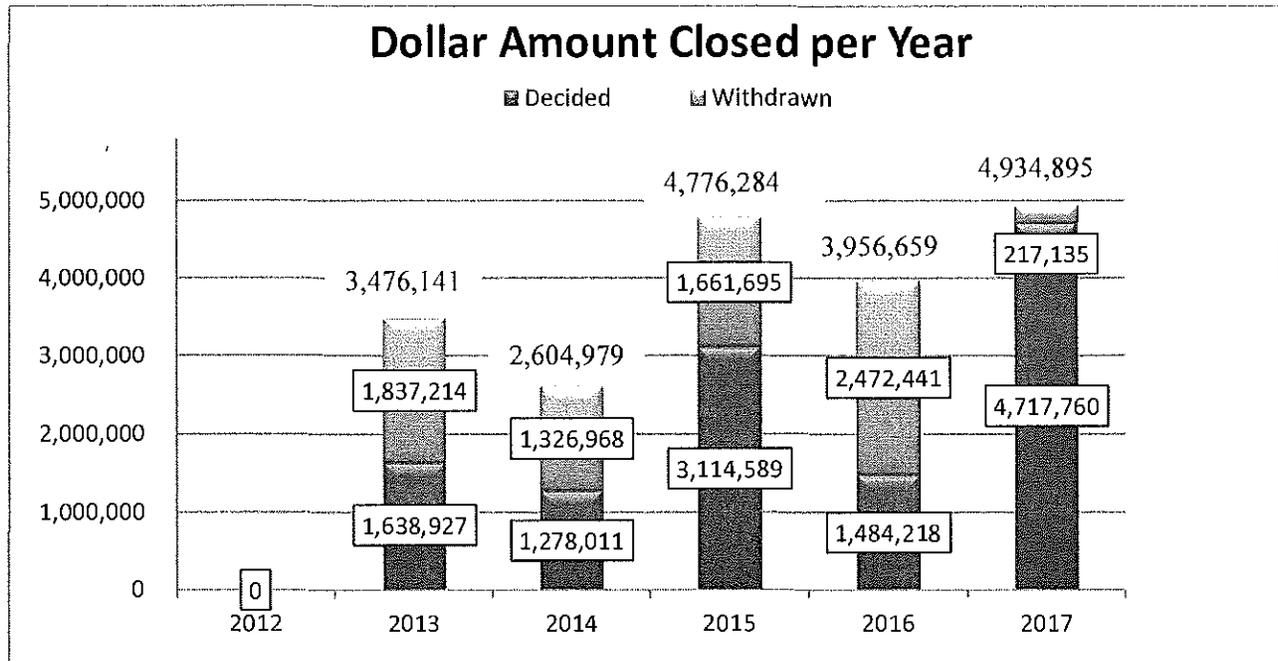
Tax types of appeals filed in 2017 were as follows:

Individual Income Tax:	9	(33%)
Corporate Income Tax:	2	
Estate Tax:	0	
Sales/Use/Service Provider Tax:	14	(52%)
BETE/BETR:	0	
Potato:	1	
Other (improper lien):	1	
Total:	27	

³ As of the date of this report, an additional 10 cases may still request appeals conferences because the time within which a conference may be requested has not yet passed as to those cases.

4. Board Decisions and Cases Closed in 2017

The Board closed 22 appeals in 2017, issuing written decisions in 13 cases (59%). The dollar amount of the appeals resolved by the Board in 2017 was \$4,934,895.



Of the 13 written decisions issued by the Board in 2017, eight were decided wholly in favor of MRS (62%), two were decided wholly in favor of the taxpayer (15%), and three were decided partially in favor of MRS and partially in favor of the taxpayer (23%). An additional nine appeals were settled or resolved between the parties without written decision by the Board.

Tax types of appeals closed by the Board in 2017 were as follows:

Individual Income Tax:	12	(54%)
Corporate Income Tax:	2	
Estate Tax:	2	
Sales/Use/Service Provider Tax:	5	
BETE/BETR:	1	
Total:	22	

5. Appeals Pending Before the Board

There are currently 18 appeals pending before the Board totaling \$2,241,215. The types of taxes at issue in these controversies are as follows:

Individual Income Tax:	4	
Corporate Income Tax:	1	
Sales/Use/Service Provider Tax:	12	(61%)
Potato Tax:	1	
Total:	18	

6. Superior Court Review of Board Decisions

Decisions of the Board may be appealed to Superior Court. There has been one appeal of a Board decision to the Superior Court in 2017, and a total of 10 appeals from Board decisions since the Board’s establishment on July 1, 2012. The outcome and status of these 10 appeals to Superior Court is set forth on the following chart:

	Board Action	Superior Court	Law Court
2013	Taxpayer (5 mos.)	MRS (33 months)	Taxpayer (11 mos.)
2013	MRS (6 months)	Taxpayer (29 mos.)	MRS (12 months)
2013	Taxpayer (8 mos.)	MRS (12 months)	Withdrawn (2 mos.)
2013	MRS (10 months)	Withdrawn (22 mos.)	N/A
2014	MRS (10 months)	Withdrawn (37 mos.)	N/A
2016	MRS (12 months)	Withdrawn (8 mos.)	N/A
2016	Taxpayer (8 mos.)	MRS (Consent) (3 mos.)	N/A
2015	Taxpayer (10 mos.)	Pending (26 months)	--
2016	MRS (9 months)	Pending (16 months)	--
2017	Taxpayer (12 mos.)	Pending (9 months)	--

Of the 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

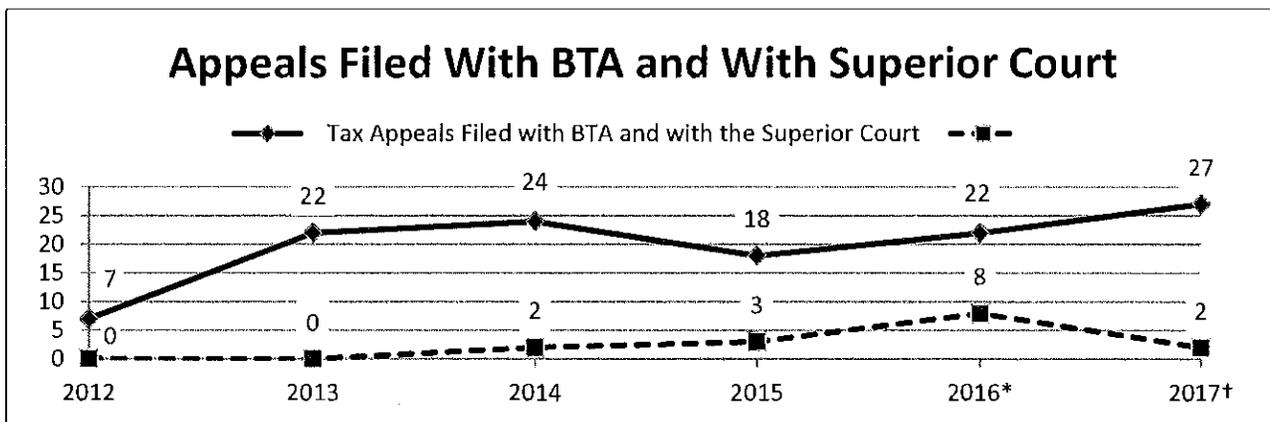
the Board and the Board’s decision was 6 months, while the average length of time between the date of Superior Court filing and Superior Court decision was 25 months.

For cases closed by written Board decision in 2017, the average length of time between the filing of the appeal and the issuance of the decision was 10 months, and the average time pending for all cases closed in 2017 was 7.3 months.

7. Direct Appeals to the Superior Court

Under Maine tax appeal law, tax cases may be appealed to the Superior Court directly from an MRS reconsidered decision, without Board involvement. 36 M.R.S. § 151. Two such appeals were taken in 2017 and remain pending in the Superior Court. Another “direct appeal” filed with the Superior Court in 2016 is now pending in the Law Court. These three cases are the only non-BTA tax controversies presently pending in the Maine court system.

Three “direct” Superior Court appeals were filed in 2015. Two were filed by *pro se* appellants and were dismissed because the appellants failed to comply with strict Superior Court procedures. The third appeal was dismissed by the parties in May 2017 after 23 months.



* 2016—A group of seven cases having similar issues and bases of assessment were appealed directly to the Superior Court in May 2016. Those cases subsequently settled in April 2017. An eighth, unrelated case was filed with the Superior Court in November 2016 is now pending in the Law Court.

† 2017—A group of 10 cases having similar issues and bases of assessment were appealed to the Board of Tax Appeals in December 2017.

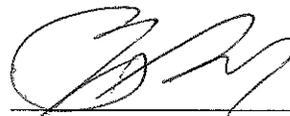
8. Public Outreach and Access

In every reconsidered decision issued by MRS where the amount in controversy is not less than \$1,000, MRS advises the taxpayer that an appeal may be taken to the Board. MRS also provides taxpayers the mailing address where such an appeal may be filed.

The Board maintains a website at www.maine.gov/boardoftaxappeals containing information about the tax appeal process and links to Maine's tax statutes and the Board's rules of practice and procedure, as well as to the MRS, IRS, and Maine Superior Court websites. Links to the Board's website are located on the MRS and the DAFS websites.

The Board also publishes redacted copies of its written decisions on its website at www.maine.gov/boardoftaxappeals/decisions, in accordance with 36 M.R.S. § 191(2)(YY) (permitting the Board 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"). There are presently 23 Board decisions available on the Board's website, and an additional six decisions in the process of being redacted. The Board's decisions are also available through the Westlaw and Lexis online legal research services, as well as through the Maine State Library (Digital Commons) and the Maine Law Library. The University of Maine School of Law has assigned a judicially recognized Uniform Maine Citations format for citing Board decisions.

Respectfully submitted,



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Date: December 29, 2017