

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FIRST SPECIAL SESSION

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2188

S. P. 757

In Senate, January 2, 1974

Referred to the Committee on State Government. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Richardson of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FOUR

AN ACT Establishing a Small Claims Tax Commission.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 36, c. 2, additional. Title 36 of the Revised Statutes is amended by adding a new chapter 2 to read as follows:

CHAPTER 2

SMALL CLAIMS TAX COMMISSION

§ 21. Small Claims Tax Commission

The Small Claims Tax Commission is established and shall consist of one member, hereafter in this chapter called the "commissioner," who shall be learned in the law and a member in good standing of the bar in this State. The commissioner shall be appointed by the Governor, with the advice and consent of the Council. The commissioner shall be appointed for a term of 5 years.

The commissioner so appointed shall hold office for the term aforesaid, unless removed and until a successor is appointed and qualified. The commissioner shall be sworn, and for inefficiency, willful neglect of duty or for malfeasance in office may, after notice and hearing, be removed by the Governor and Council. In case of a vacancy occurring through death, resignation or removal, the Governor shall appoint a successor for the whole term of the commissioner whose place he takes, subject to removal.

The commissioner shall receive a salary of \$9,000 per year and the actual, necessary cash expenses while away from the office on official business of the

commission. The commissioner shall appoint a clerk and clerical assistance as may be necessary, subject to the Personnel Law.

The commission shall have a seal bearing the words "Small Claims Tax Commission." It shall have its office and keep its records in the State House in Augusta, but may hold sessions at any place within the State.

§ 22. Authority of commission; forms and procedure

The commission shall have general supervision over the administration of this chapter and shall have powers to make rules and regulations not inconsistent with this chapter or other laws of the State for the purpose of carrying out this chapter. It may prescribe forms and make suitable orders as to procedure adapted to secure a speedy, efficient and inexpensive disposition of all proceedings. It may provide blank forms of reports, agreements, petitions and other forms required.

§ 23. Jurisdiction

The Small Claims Tax Commission shall have jurisdiction in the following cases:

1. A claim for refund or an appeal from the determination of an assessor concerning a notice of deficiency where the amount in controversy does not exceed \$500, exclusive of interest or penalty, for any one tax year where the taxpayer elects to be subject to the jurisdiction of the Small Claims Tax Commission rather than appeal as provided in chapter 833;

2. Appeals from the assessor or the Board of Assessment Review, where provided, where the tax does not exceed \$500 for any one tax year and the taxpayer elects to be subject to the jurisdiction of the Small Claims Tax Commission rather than to appeal as provided by section 844-L;

3. Appeals from a determination of or claims for a refund with respect to any other tax imposed under this Title where the amount in controversy for any single year or taxing period does not exceed \$500.

§ 24. Notice to taxpayer

By regulation the State Tax Assessor shall promulgate rules requiring the taxing authorities to give notice to the taxpayer of the right to appeal to the Small Claims Tax Commission.

§ 25. Election requirement

A taxpayer may elect to proceed in the Small Claims Tax Commission instead of the Superior Court. If the taxpayer elects to appeal to the commission, the election may not be revoked and the taxpayer will have no further right of appeal.

§ 26. Commencement of proceeding

A taxpayer shall commence a proceeding in the Small Claims Tax Commission by filing with the clerk of the commission a petition, in the form prescribed by the rules of the commission, which shall state the nature of the taxpayer's claim.

The action authorized in this chapter shall be filed within 2 years from the last date prescribed for filing the return or within one year from the date the tax was paid or within 90 days after the denial of a claim for refund by an assessor or within 90 days after the refund claim has been deemed to be disallowed because of the failure of the assessor to mail a notice of action within 6 months after the claim was filed, whichever period expires the later.

§ 27. Notice to assessor or taxing authority of filing of petition

Upon the filing of a petition of a taxpayer to the commission, the clerk of the commission shall give notice thereof to the applicable assessor or taxing authority, as the case may be, and such assessor or authority shall thereafter be deemed a party to the proceeding and at the hearing on the petition, may appear in opposition thereto. In the event a petition is filed, the commission shall thereafter have exclusive jurisdiction over the case.

§ 28. Time and place of hearing

The commissioner shall fix a time for hearing upon at least 10-days notice to all the parties. All hearings shall be held at such towns and cities geographically distributed throughout the State as the commissioner shall designate.

§ 29. Hearings to be informal

The hearing in the commission shall be informal and the commissioner may hear such testimony and receive such evidence as is deemed necessary or desirable for a just and equitable determination of the case, except that all testimony shall be given under oath. A party may appear on his own behalf or may be represented by an attorney.

§ 30. Subpoenas

The commissioner may administer oaths and the commissioner or clerk of any Superior Court may issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books, papers and photographs relating to any questions in dispute before the commission or to any matters involved in the hearing. When a witness, subpoenaed and obliged to attend before the commission, fails to do so without reasonable excuse, the Superior Court or any justice thereof may, on application of the Attorney General, made at the written request of the commission, compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of the subpoena issued from such court or a refusal to testify therein. Witness fees shall be the same for witnesses before the Superior Court.

§ 31. Dismissal of case on taxpayer's request

At any time prior to entry of judgment, a taxpayer may dismiss a case in the Small Claims Tax Commission by notifying the clerk of the commission in writing, but such dismissal shall be with prejudice and shall not have the effect of revoking the election specified in section 25.

§ 32. Judgments

The judgment in the Small Claims Tax Commission shall be conclusive upon all parties and may not be appealed. A judgment may include orders to the Department of Finance and Administration and municipal taxing authorities to correct an assessment or a tax, or both modify or cancel an assessment, pay or allow a refund to take such other action as may be necessary to effectuate the judgment. A judgment shall not be considered as judicial precedent or be given any force or effect in any other case, hearing or proceeding.

Sec. 2. R. S., T. 36, § 844-L, amended. Section 844-L of Title 36 of the Revised Statutes, as enacted by section 17 of chapter 592 of the public laws of 1973, is amended to read as follows:

§ 844-L. Appeal to the Superior Court

A protesting taxpayer and the assessors may appeal the decision of the State Board of Assessment Review to the Superior Court as provided for in section 846, in the county where the property is located **or to the Small Claims Tax Commission.**

Sec. 3. R. S., T. 36, § 845, amended. Section 845 of Title 36 of the Revised Statutes is amended to read as follows:

§ 845. —to Superior Court

Any person entitled to appeal to a board of assessment review or to the county commissioners for an abatement of his taxes may, if he so elect, appeal under the same terms and conditions from the decision of the assessors to the Superior Court in and for that county **or to the Small Claims Tax Commission.**

Sec. 4. R. S., T. 36, § 5301, amended. The first sentence of section 5301 of Title 36 of the Revised Statutes, as enacted by Section F of chapter 154 of the private and special laws of 1969, is amended to read as follows:

The review of a determination of the assessor provided by section 5300 shall be the ~~exclusive~~ remedy available to any taxpayer for the judicial review of the action of the assessor in respect to the assessment of a proposed deficiency.

Sec. 5. R. S., T. 36, § 5310, amended. The first sentence of section 5310 of Title 36 of the Revised Statutes, as enacted by Section F of chapter 154 of the private and special laws of 1969, is amended to read as follows:

If any claim, statement, notice, petition or other document including, to the extent authorized by the assessor a return or declaration of estimated tax, required to be filed within a prescribed period or on or before a prescribed date under the authority of any provision of this Part is, after such period or such date, delivered by United States mail to the assessor, or the officer or person therein with which or with whom such document is required to be filed, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery, **except as provided in chapter 2.**

STATEMENT OF FACT

This legislation establishes a Small Claims Tax Commission for Maine taxpayers so that the taxpayer does not have to go to court where the amount involved is less than \$500. Thus, the taxpayer will have a quasi-judicial determination of his liability without expending significant funds.