

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1348

H. P. 1067

House of Representatives, March 19, 1979

On Motion of Mrs. Post of Owl's Head, referred to the Committee on Taxation.
Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Post of Owl's Head.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Establish Standard Assessment Procedures for the Tax Laws.

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

Sec. 1. 36 MRSA c. 5, as amended by PL 1975, c. 771, § 398, is repealed.

Sec. 2. 36 MRSA c. 7, § 111 is enacted to read:

§ 111. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. Assessor. "Assessor" means the State Tax Assessor, except that, in Part 2, property taxes, it means the State Tax Assessor with respect to the unorganized territory and the respective municipal assessors or chief assessors of primary assessing areas with respect to the organized areas.

2. Notice. "Notice" means notification served personally or mailed by certified or registered mail to the last known address of the person for whom the notification is intended.

If the State Tax Assessor attempts to give notice by certified or registered mail and the mailing is returned by the United States Postal Service with the notification unclaimed or refused, he may then give notice, for purposes of this

Title, by sending the notification by first-class mail to the person for whom the notification is intended at the address used on the returned certified or registered mail. Notice given in this manner shall be deemed to be received 3 days after the first-class mailing.

In the case of a joint income tax return, notice may be a single joint notice except that, if the State Tax Assessor is notified by either spouse that separate residences have been established, he shall mail a joint notice to each spouse.

If the person for whom notification is intended is deceased or under a legal disability, notice may be mailed to that person's last known address, unless the State Tax Assessor has received notice of the existence of a fiduciary relationship with respect to that person, in which case notice shall be mailed to the last known address of the fiduciary.

3. Person. "Person" means an individual, firm, partnership, association, society, club, corporation, estate, trust, business trust, receiver, assignee or any other group or combination acting as a unit, the State or Federal Government or any political subdivision or agency of either government.

4. Return. "Return" means any document containing information required by this Title to be reported to the State Tax Assessor.

5. Tax. "Tax" means the total amount of each tax required to be paid, withheld and paid over, or collected and paid over under this Title and includes the amount of any interest, addition to tax or civil penalty relating thereto.

6. Tax Assessor. "Tax Assessor" means the State Tax Assessor.

Sec. 3. 36 MRSA c. 7, § 141 is enacted to read:

§ 141. Assessment

1. General provisions. Unless otherwise provided, any amount of tax which a person declares on a return filed by him with the State Tax Assessor to be due to the State shall be deemed to be assessed and shall be payable on or before the date prescribed for filing the return, determined without regard to any extension of time granted for filing the return. When a return is filed, the State Tax Assessor shall cause it to be examined and may conduct such audits or investigations as he believes necessary to determine the correct tax liability. If he determines that the amount of tax shown on the return is less than the correct amount, the State Tax Assessor shall assess the tax due the State. No assessment shall be made after 3 years from the date the return was filed or the date the return was required to be filed, whichever is later. At any time within the appropriate assessment period prescribed by this section, the State Tax Assessor may make a supplemental assessment if he finds that any previous assessment is imperfect or incomplete in any material aspect.

2. Exceptions.

A. An assessment may be made within 6 years from the date the return was

filed if the tax liability shown on the return is less than $\frac{1}{2}$ of the tax liability determined by the State Tax Assessor and the additional liability is attributable to information which was required to be reported but was not reported in the return.

B. An assessment may be made at any time with respect to a time period for which a fraudulent return has been filed.

C. An assessment may be made at any time with respect to a time period for which no return has been filed. If any person failing to file a return fails to produce, with a reasonable time after notice, information which the State Tax Assessor believes necessary to determine tax liability for the period involved, the State Tax Assessor may assess an estimated tax liability based upon the best information otherwise available. In any proceeding for the collection of tax for the period involved, that estimate shall constitute prima facie evidence of the tax liability.

D. If the State Tax Assessor finds that the collection of tax for any reporting period will be jeopardized by delay, he may, upon giving notice of this finding to the person liable for the tax, demand immediate payment of any tax which has been assessed and terminate the current reporting period and demand an immediate return with respect to that period. Assessments for periods as to which jeopardy has been declared are immediately payable and proceedings for collection may be commenced at once. The person liable may stay collection by petitioning, in accordance with section 151, for reconsideration of the assessment and by depositing with the State Tax Assessor, within the time period specified in section 151, a bond or other security in the amount of the assessment with respect to which the stay of collection is sought. Any finding by the State Tax Assessor of jeopardy or of tax liability as to which immediate payment is demanded under this paragraph is presumed to be correct, and the burden of showing otherwise shall be upon the taxpayer.

E. The time limitations for assessment specified in this section may be extended to any later date to which the State Tax Assessor and person liable for tax agree in writing.

3. Abatement. If justice requires, the State Tax Assessor may, with the approval of the Governor, abate, within 3 years from the date of assessment, all or part of any tax assessed by the State Tax Assessor.

Sec. 4. 36 MRSA § 151, first paragraph, 3rd sentence, as enacted by PL 1977, c. 694, § 676, is repealed as follows:

~~For purposes of income taxation, the word "assessment" in this section shall have the same meaning as the term "proposed assessment" in the income tax law~~

Sec. 5. 36 MRSA § 573, sub-§ 1, as enacted by PL 1971, c. 616, § 8, is repealed.

Sec. 6. 36 MRSA § 1102, sub-§ 1, as enacted by PL 1975, c. 726, § 2, is repealed.

Sec. 7. 36 MRSA § 1752, sub-§ 18 is repealed.

Sec. 8. 36 MRSA § 1906 is repealed.

Sec. 9. 36 MRSA § 1954, as amended by PL 1965, c. 196, § 3, is repealed.

Sec. 10. 36 MRSA § 1955, as repealed and replaced by PL 1975, c. 702, § 7, is repealed.

Sec. 11. 36 MRSA § 1955-C is enacted to read:

§ 1955-C. Assessment for vehicles

Certificates forwarded to the State Tax assessor under Title 29, section 204, shall be treated as returns filed under this Title for purposes of section 141.

Sec. 12. 36 MRSA § 1956, as repealed and replaced by PL 1977, c. 316, § 3, is repealed.

Sec. 13. 36 MRSA § 2518, first sentence, as repealed and replaced by PL 1973, c. 727, § 8, is amended to read:

~~If any insurance company or association refuses or neglects to make a return required by this chapter, the State Tax Assessor shall make assessment on such company or association as he deems just, and unless the same is paid fails to pay on demand a tax assessed under section 141, subsection 2, paragraph C, the State Tax Assessor shall certify that failure to the Superintendent of Insurance that payment of such tax has not been made and such who shall give notice to the company or association that it shall do no more business in the State and the Superintendent of Insurance shall give notice accordingly.~~

Sec. 14. 36 MRSA § 2628, 2nd sentence is repealed as follows:

~~Until such returns are so required, or, in default of such returns when required, the State Tax Assessor shall act upon the best information that he may obtain~~

Sec. 15. 36 MRSA § 2687-A, as amended by PL 1975, c. 723, § 59, is repealed.

Sec. 16. 36 MRSA § 2966, as amended by PL 1973, c. 7, § 5, is amended to read:

§ 2966. Collection of tax

~~If any motor carrier, subject to this chapter and not exempted under section 2965, fails to make the returns required, the State Tax Assessor shall make an assessment of the tax, interest and penalties upon such calculation of the amount of motor fuel used by such motor carrier within this State as he thinks just, with such evidence as he may obtain, and such assessment shall be final. If any motor carrier fails to pay such tax, interest and penalties on demand a tax assessed under section 141, subsection 2, paragraph C, the State Tax Assessor may forthwith commence a civil action in the name of the State for recovery of the tax thereof. In addition to such action or without bringing such action, the State Tax Assessor and may recommend to the Public Utilities Commission that the certificate or permit of such that motor carrier be suspended or revoked.~~

Sec. 17. 36 MRSA § 3031, as amended by PL 1965, c. 513, § 78, is repealed.

Sec. 18. 36 MRSA § 3583 is repealed.

Sec. 19. 36 MRSA § 4361, sub-§ 8 is repealed.

Sec. 20. 36 MRSA § 4527, as enacted by PL 1975, c. 444, § 6, is repealed.

Sec. 21. 36 MRSA § 5102, sub-§§ 1 and 9, as enacted by P&SL 1969, c. 154, § F, are repealed.

Sec. 22. 36 MRSA § 5260, as enacted by P&SL 1969, c. 154, § F, is repealed.

Sec. 23. 36 MRSA § 5267, as enacted by P&SL 1969, c. 154, § F, is repealed.

Sec. 24. 36 MRSA § 5269, as amended by PL 1977, c. 694, § 725, is repealed.

Sec. 25. 36 MRSA § 5270, sub-§ 1, as enacted by P&SL 1969, c. 154, § F, is repealed.

Sec. 26. 36 MRSA § 5270, sub-§ 2, first sentence, as enacted by P&SL 1969, c. 154, § F, is amended to read:

If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25% of the amount of gross income stated in the return, ~~a notice of a proposed deficiency~~ an assessment may be mailed to the taxpayer made within 6 years after the return was filed.

Sec. 27. 36 MRSA § 5270, sub-§§ 3-7, is enacted by P&SL 1969, c. 154, § F, are repealed.

Sec. 28. 36 MRSA § 5271, as enacted by P&SL 1969, c. 154, § F, is repealed.

Sec. 29. 36 MRSA § 5274-A is enacted to read:

§ 5274-A. Penalty

Any penalty required to collect, truthfully account for and pay over the tax imposed by this Part, who willfully fails to collect the tax, willfully fails to truthfully account for and pay over the tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, not collected or not accounted for and paid over. For purposes of this section, "person" means an individual, corporation or partnership or an officer or employee of any corporation, including a dissolved corporation, or a member or employee of any partnership who, as such officer, employee or member, was, at the time of the violation, under a duty to perform the act with respect to which the violation occurred.

Sec. 30. 36 MRSA § 5275, sub-§ 2, last ¶, as enacted by P&SL 1969, c. 154, § F, is repealed.

Sec. 31. 36 MRSA § 5302, as amended by PL 1977, c. 694, § 730, is repealed.

Sec. 32. 36 MRSA § 5303, as amended by PL 1977, c. 694, § 731, is repealed.

Sec. 33. 36 MRSA § 5311, sub-§ 2, as last amended by PL 1977, c. 165, § 6, is further amended to read:

2. Notice and demand. The assessor **State Tax Assessor** shall as soon as practicable give notice to each taxpayer liable for any amount of **unpaid** tax, addition to tax, ~~additional amount~~ penalty or interest, which has been assessed ~~but remains unpaid and as to which administrative and judicial review have been exhausted~~, stating the amount and demanding **payment thereof** within 10 days of the date of the notice and demand ~~demand thereof~~. Such notice ~~shall be left at the dwelling place or usual place of business of such person or shall be sent by certified or registered mail to such person's last known address and~~ shall warn the person that if he does not make the payment as demanded, the **assessor State Tax Assessor** may certify the amount due for collection by warrant ~~as provided~~, or may certify the amount due to the Attorney General for collection. Except where the **assessor State Tax Assessor** determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date, including any date fixed by extension, prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.

Sec. 34. 36 MRSA § 5321, as amended by PL 1977, c. 694, § 735, is repealed.

Sec. 35. 36 MRSA § 5322, sub-§ 2, as enacted by P&SL 1969, c. 154, § F, is amended to read:

2. Adjudication of claims. Claims for the deficiency and such additions to tax and interest may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of a protest before the **assessor State Tax Assessor** under section ~~5262~~ 151. No protest against a proposed assessment shall be filed with the **assessor State Tax Assessor** after the adjudication of bankruptcy or appointment of the receiver.

STATEMENT OF FACT

The purpose of this bill is to continue the development of uniform administrative provisions for the tax laws by establishing standardized procedures for the assessment of all state taxes.