

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1583, L.D. 2233, Bill, "An Act to Protect Taxpayer Rights by Amending the Taxpayer Bill of Rights and Making More Equitable Tax Penalty and Appeal Provisions"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 36 MRSA §112, sub-§1, as enacted by PL 1981, c. 364, §7, is amended to read:

1. **General powers and duties.** The State Tax Assessor shall administer and enforce the tax laws enacted under this Title and, pursuant to this Title, may ~~make--such~~ adopt rules and require such information to be reported as he ~~deems~~ necessary. The State Tax Assessor shall provide, at the time of issuance by the assessor, to one or more entities that publish a monthly state tax service all rules, bulletins, taxpayer notices or alerts, notices of rulemaking, any other taxpayer information issued by the State Tax Assessor, and all amendments or modifications of the same, for publication by that entity or entities. When a significant change has occurred in Bureau of Taxation policy or practice or in the interpretation by the Bureau of Taxation of any law, rule or instruction bulletin, the State Tax Assessor shall, within 60 days of the change, provide to the same publishing entity or entities written notice, suitable for publication, of the change.

Sec. 2. 36 MRSA §112, sub-§4, as enacted by PL 1981, c. 364, §7, is amended to read:

4. **Examination of records and premises.** Whenever he ~~deems~~ it necessary to the administration of this Title, the State Tax

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2 Assessor may make, or cause to be made by his an employee, an
3 examination or investigation of the place of business, books and
4 other documents and any other relevant personal property of any
5 person who the State Tax Assessor has reason to believe is liable
6 for any tax imposed by this Title.

7 At the conclusion of an audit, the State Tax Assessor or an agent
8 shall conduct an audit conference with the taxpayer and shall
9 give the taxpayer a written summary of the audit findings,
10 including the legal basis for the audit findings and adjustments,
11 along with copies of relevant Bureau of Taxation audit workpapers.

12 **Sec. 3. 36 MRSA §151**, as amended by PL 1989, c. 848, §3 and
13 c. 871, §2, is repealed and the following enacted in its place:

14 **§151. Review of decision of State Tax Assessor**

15 Any person who is subject to an assessment by the State Tax
16 Assessor or entitled by law to receive notice of a determination
17 of the State Tax Assessor and who is aggrieved as a result of
18 that action may request in writing, within 30 days after receipt
19 of notice of the assessment or the determination, reconsideration
20 by the State Tax Assessor of the assessment or the determination.

21 If a request for reconsideration is filed within the
22 specified time period, the State Tax Assessor shall reconsider
23 the assessment or the determination. If the petitioner has so
24 requested in the petition, the State Tax Assessor shall hold an
25 informal conference with the petitioner to receive additional
26 information and to hear arguments regarding the protested
27 assessment or determination. The State Tax Assessor shall give
28 the petitioner 10 working days' notice of the time and place of
29 the conference. However, the conference may be held with less
30 than 10 working days' notice if a mutually convenient time and
31 place can be arranged between the petitioner and the State Tax
32 Assessor. The reconsideration, with or without an informal
33 conference, is not an "adjudicatory proceeding" within the
34 meaning of that term in the Maine Administrative Procedure Act.

35 The State Tax Assessor's decision on reconsideration must be
36 mailed to the taxpayer by certified or registered mail and the
37 decision must set forth briefly the State Tax Assessor's findings
38 of fact and the basis of decision in each case decided in whole
39 or in part adversely to the taxpayer. The State Tax Assessor's
40 decision on reconsideration constitutes final agency action that
41 is subject to review by the Superior Court in accordance with the
42 Maine Administrative Procedure Act, except that Title 5, sections
43 11006 and 11007 do not apply. The Superior Court shall conduct a
44 de novo hearing and make a de novo determination of the merits of
45 the case. It shall make its own determination as to all
46 the case. It shall make its own determination as to all

2 questions of fact or law. The Superior Court shall enter such
3 orders and decrees as the case may require. The burden of proof
4 is on the taxpayer.

5 **Sec. 4. 36 MRSA §187**, as amended by PL 1991, c. 546, §§2 to
6 6, is repealed.

7 **Sec. 5. 36 MRSA §187-B** is enacted to read:

8 **§187-B. Penalties**

9 **1. Failure to file return.** Any person who fails to make
10 and file any return required under this Title at or before the
11 time the return becomes due is liable for one of the following
12 penalties.

13 **A.** If the return is filed before or within 30 days after
14 the taxpayer receives from the State Tax Assessor a formal
15 demand that the return be filed, the penalty is \$10 or 10%
16 of the tax due, whichever is greater.

17 **B.** If the return is filed later than 30 days after the
18 taxpayer receives from the State Tax Assessor a formal
19 demand that the return be filed, the penalty is 100% of the
20 tax due.

21 **C.** If the return is not filed and the State Tax Assessor
22 issues a jeopardy assessment pursuant to section 141,
23 subsection 2, paragraph D, the penalty is 100% of the tax
24 due.

25 **2. Failure to pay.** The following penalties apply.

26 **A.** Any person who fails to pay, on or before the due date,
27 any amount shown as tax on any return required under this
28 Title is liable for a penalty of \$5 or 1% of the unpaid tax,
29 whichever is greater, for each month or fraction of a month
30 during which the failure continues, to a maximum in the
31 aggregate of \$25 or 25% of the unpaid tax, whichever is
32 greater.

33 **B.** Any person who fails to pay a tax assessment for which
34 no further administrative or judicial review is available
35 pursuant to section 151 and the Maine Administrative
36 Procedure Act is liable for a penalty in the amount of \$25
37 or 25% of the amount of the tax due, whichever is greater,
38 if the payment of the tax is not made within 10 days of the
39 person's receipt of notice of demand for payment as provided
40 by this Title. This penalty must be explained in the notice

of demand and is final when levied.

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3. Negligence; fraud. Any person who files a return under this Title that results in an underpayment of tax, any portion of which is attributable to negligence or intentional disregard of this Title or rules issued pursuant to this Title, but is not attributable to fraud with intent to evade the tax, is liable for a penalty in the amount of \$10 or 10% of that portion of the underpayment, whichever is greater. Any person who files a return under this Title that results in an underpayment of tax, any portion of which is attributable to fraud with intent to evade the tax, is liable for a penalty in the amount of \$75 or 75% of that portion of the underpayment, whichever is greater. For the purposes of this section, the term "negligence" means any failure to make a reasonable attempt to comply with the provisions of this Title.

This subsection is repealed on July 1, 1993.

4. Substantial understatement. Any person who files a return under this Title that results in an underpayment of tax, any portion of which is attributable to a substantial understatement of tax, is liable for a penalty of \$5 or 1% of that portion of the underpayment, whichever is greater, for each month or fraction of a month during which the failure to pay that portion of the underpayment continues, to a maximum in the aggregate \$25 or 25% of the underpayment, whichever is greater.

There is a substantial understatement of tax if the amount of the understatement on the return or returns for the period covered by the assessment exceeds 5% of the total tax required to be shown on the return or returns for that period or \$1,000, whichever is greater. For purposes of calculating whether an understatement is substantial and the amount of any substantial understatement that is subject to penalty under this subsection, the amount of any understatement is reduced by that portion of the understatement that is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment.

This subsection is repealed on July 1, 1993.

5. Insufficient funds check. Any person who makes payment of an amount due under this Title by means of a check that is returned unpaid by the bank on which it is drawn because of insufficient funds or the closing or nonexistence of the account on which it is drawn is liable for a penalty of \$10 or 1% of the check amount, whichever is greater.

2 6. Penalties not exclusive. Each penalty provided by this
3 section is in addition to any interest and other penalties
4 provided by this section and other law, except as otherwise
5 provided in this section, and interest may not accrue on the
6 penalty. This section does not apply to any filing or payment
7 responsibility pursuant to Part 2. The penalties imposed by
8 subsections 1 and 2 accrue automatically, without being assessed
9 by the State Tax Assessor, and each penalty imposed by this
10 section is recoverable by the State Tax Assessor in the same
11 manner as if it were a tax assessed under this Title.

12 7. Reasonable cause. For reasonable cause, the State Tax
13 Assessor shall waive or abate any penalty imposed by subsection
14 1; subsection 2, paragraphs A and B; and subsections 4 and 4-A.
15 Reasonable cause includes, but is not limited to, the following:

16 A. The failure to file or pay resulted directly from
17 erroneous information provided by the Bureau of Taxation;

18 B. The failure to file or pay resulted directly from the
19 death or serious illness of the taxpayer or a member of the
20 taxpayer's immediate family;

21 C. The failure to file or pay resulted directly from a
22 natural disaster;

23 D. A return that was due monthly was filed less than one
24 month late and all of the taxpayer's returns and payments
25 during the preceding 12 months were timely;

26 E. A return that was due other than monthly was filed less
27 than one month late and all of the taxpayer's returns and
28 payments during the preceding 3 years were timely;

29 F. The taxpayer has supplied substantial authority
30 justifying the failure to file or pay; or

31 G. The amount subject to a penalty imposed by subsections 1
32 and 2 is de minimis when considered in relation to the
33 amount otherwise properly paid, the reason for the failure
34 to file or pay and the taxpayer's compliance history.

35 The burden of establishing grounds for waiver or abatement is on
36 the taxpayer.

37 For purposes of this section, the term "person" includes an
38 individual, corporation or partnership or any officer or employee
39 of a partnership who, as the officer, employee or member, is
40 under a duty to perform the act in respect of which a violation
41 occurs.

2 **Sec. 6. 36 MRS.A §187-B, sub-§3-A** is enacted to read:

4 3-A. Negligence; fraud. Any person who files a return
6 under this Title that results in an underpayment of tax, any
8 portion of which is attributable to negligence or intentional
10 disregard of this Title or rules issued pursuant to this Title,
12 but is not attributable to fraud with intent to evade the tax, is
14 liable for a penalty in the amount of \$25 or 25% of that portion
16 of the underpayment, whichever is greater. Any person who files
18 a return under this Title that results in an underpayment of tax,
20 any portion of which is attributable to fraud with intent to
22 evade the tax, is liable for a penalty in the amount of \$75 or
24 75% of that portion of the underpayment, whichever is greater.
26 For the purposes of this section, the term "negligence" means any
28 failure to make a reasonable attempt to comply with the
30 provisions of this Title.

32 This subsection takes effect July 1, 1993.

34 **Sec. 7. 36 MRS.A §187-B, sub-§4-A** is enacted to read:

36 4-A. Substantial understatement. Any person who files a
38 return under this Title that results in an underpayment of tax,
40 any portion of which is attributable to a substantial
42 understatement of tax, without negligence or intentional
44 disregard of this Title or rules or regulations issued under this
46 Title and without fraud with intent to evade the tax, is liable
48 for a penalty of \$5 or 1% of that portion of the underpayment,
50 whichever is greater, for each month or fraction of a month
 during which the failure to pay that portion of the underpayment
 continues, to a maximum in the aggregate of \$25 or 25% of the
 underpayment, whichever is greater.

There is a substantial understatement of tax if the amount of the
 understatement on the return or returns for the period covered by
 the assessment exceeds 10% of the total tax required to be shown
 on the return or returns for that period or \$1,000, whichever is
 greater. For purposes of calculating whether an understatement
 is substantial and the amount of any substantial understatement
 that is subject to penalty under this subsection, the amount of
 any understatement is reduced by that portion of the
 understatement that is attributable to the tax treatment of any
 item by the taxpayer if there is or was substantial authority for
 such treatment.

This subsection takes effect July 1, 1993.

Sec. 8. Effective date. Sections 4 and 5 of this Act takes
effect August 1, 1992.

