

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2233

H.P. 1583

House of Representatives, January 28, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative CASHMAN of Old Town.

Cosponsored by Senator BOST of Penobscot, Representative DORE of Auburn and Representative DUFFY of Bangor.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-TWO

An Act to Protect Taxpayer Rights by Amending the Taxpayer Bill of Rights and Making More Equitable Tax Penalty and Appeal Provisions.



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

2
4 **Sec. 1. 36 MRSA §112, sub-§1**, as enacted by PL 1981, c. 364,
§7, is amended to read:

6 **1. General powers and duties.** The State Tax Assessor shall
8 administer and enforce the tax laws enacted under this Title and,
pursuant to this Title, may ~~make~~ adopt rules and require
10 such information to be reported as he ~~deems~~ deems necessary. When a
12 substantive change has occurred in a Bureau of Taxation policy,
practice, instruction bulletin or rule or in the interpretation
14 by the Bureau of Taxation of any law, rule, regulation or
instruction bulletin, the State Tax Assessor shall, within 60
16 days of a change, publish the change in newspapers of general
circulation in this State or otherwise notify taxpayers who may
be significantly affected by the change.

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c. 871, §2, is repealed and the following enacted in its place:

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

22 Any person who is entitled by law to receive notice of a
24 decision of the State Tax Assessor and who is aggrieved by that
decision may petition in writing, within 30 days after receipt of
26 notice of that decision, for reconsideration by the State Tax
Assessor of that decision.

28 If a request for reconsideration is filed within the
30 specified time period, the State Tax Assessor shall reconsider
the decision. If the petitioner has so requested in the
32 petition, the State Tax Assessor shall hold an informal
conference with the petitioner to receive additional information
34 and to hear arguments regarding the protested decision. The
State Tax Assessor shall give the petitioner 10 working days'
36 notice of the time and place of the conference. However, the
conference may be held with less than 10 working days' notice if
38 a mutually convenient time and place can be arranged between the
petitioner and the State Tax Assessor. If the person has so
40 requested, the State Tax Assessor, within 30 days of the request
and at least 30 days prior to the reconsideration conference or
42 30 days prior to issuing a decision on reconsideration if no
reconsideration conference is requested, shall provide to the
44 taxpayer a brief written explanation of the legal and factual
basis for the assessment and any penalties. The reconsideration,
46 with or without an informal conference, is not an "adjudicatory
proceeding" within the meaning of that term in the Maine
48 Administrative Procedure Act.

2 The State Tax Assessor's decision on reconsideration must be
4 mailed to the taxpayer by certified or registered mail and the
6 decision must set forth briefly the State Tax Assessor's findings
8 of fact and the basis of decision in each case decided in whole
10 or in part adversely to the taxpayer. The State Tax Assessor's
12 decision on reconsideration constitutes final agency action that
14 is subject to review by the Superior Court in accordance with the
16 Maine Administrative Procedure Act, except that Title 5, sections
 11006 and 11007 do not apply. The Superior Court shall conduct a
 de novo review and make its own determination as to all questions
 of fact or law. If the Superior Court finds that the taxpayer
 has been over-assessed or assessed erroneously, it shall order
 the State Tax Assessor to reduce the assessment to the amount the
 Superior Court finds proper and enter other orders and decrees as
 the case may require. The burden of proof is on the taxpayer.

18 **Sec. 3. 36 MRSA §187**, as amended by PL 1991, c. 546, §§2 to
20 6, is repealed.

22 **Sec. 4. 36 MRSA §187-B** is enacted to read:

24 **§187-B. Penalties**

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

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

34 B. If the return is filed later than 15 days after the
36 taxpayer receives from the State Tax Assessor a formal
38 demand that the return be filed, the penalty is 100% of the
40 tax due. The amount of the penalty imposed under this
42 paragraph is reduced by the amount of the penalty under
 subsection 2, paragraph A for the month, or fraction of the
 month, to which a penalty applies under both this paragraph
 and subsection 2, paragraph A.

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

46 A. Any person who fails to pay, on or before its due date,
48 any amount shown as tax on any return required under this
 Title, unless it is shown that such failure is due to
 reasonable cause and not due to willful neglect, is liable
50 for a penalty of \$5 or 1% of the unpaid tax, whichever is

2 greater, for each month or fraction of a month during which
3 the failure continues, to a maximum in the aggregate of \$25
4 or 25% of the unpaid tax, whichever is greater.

6 B. Any person who fails to pay a tax assessment for which
7 no further administrative or judicial review is available
8 pursuant to section 151 and the Maine Administrative
9 Procedure Act, unless it is shown that the failure is due to
10 a reasonable cause and not due to willful neglect, is liable
11 for a penalty in the amount of \$25 or 25% of the amount of
12 the tax, whichever is greater, if the payment of the tax is
13 not made within 10 days of the person's receipt of notice of
14 demand for payment as provided by this Title. This penalty
15 must be explained in the notice of demand and is final,
16 unless reasonable cause for waiver exists pursuant to
17 subsection 7.

18 3. Negligence; fraud. Any person who files a return under
19 this Title that results in an underpayment of tax, any portion of
20 which is attributable to negligence or intentional disregard of
21 this Title or rules or regulations issued pursuant to this Title,
22 but is not attributable to fraud with intent to evade the tax, is
23 liable for a penalty in the amount of \$25 or 25% of that portion
24 of the underpayment, whichever is greater. Any person who files
25 a return under this Title that results in an underpayment of tax,
26 any portion of which is attributable to fraud with intent to
27 evade the tax, is liable for a penalty in the amount of \$50 or
28 50% of that portion of the underpayment, whichever is greater.
29 For the purposes of this section, the term "negligence" means any
30 failure to make a reasonable attempt to comply with the
31 provisions of this Title.

32 4. Substantial understatement. Any person who files a
33 return under this Title that results in an underpayment of tax,
34 any portion of which is attributable to a substantial
35 understatement of tax, without negligence or intentional
36 disregard of this Title or rules or regulations issued under this
37 Title and without fraud with intent to evade the tax, is liable
38 for a penalty of \$10 or 10% of that portion of the underpayment,
39 whichever is greater.

42 There is a substantial understatement of tax if the amount of the
43 understatement on the return or returns for the period covered by
44 the assessment exceeds 10% of the total tax required to be shown
45 on the return or returns for that period or \$1,000, whichever is
46 greater. The amount of any understatement is reduced by that
47 portion of the understatement that is attributable to the tax
48 treatment of any item by the taxpayer if there is or was
substantial authority for such treatment or any item with respect

2 to which the relevant facts affecting the item's tax treatment
3 are adequately disclosed in the return or in a statement attached
4 to the return.

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

11 **6. Generally.** Each penalty provided by this section is in
12 addition to any interest and other penalties provided by this
13 section and other law, except as otherwise provided in this
14 section. Interest does not accrue on any penalty. This section
15 does not apply to any filing or payment responsibility pursuant
16 to Part 2. The penalties imposed by subsections 1 and 2 accrue
17 automatically, without being assessed by the State Tax Assessor,
18 and each penalty imposed by this section is recoverable by the
19 State Tax Assessor in the same manner as if it were a tax
20 assessed under this Title. A request to waive or abate any
21 penalty may be made pursuant to section 151. For purposes of
22 this section, the term "person" includes an individual,
23 corporation or partnership; or any officer or employee of a
24 corporation, including a dissolved corporation, or a member or
25 employee of a partnership who, as the officer, employee or
26 member, is under a duty to perform the act in respect of which
27 the violation occurs.

28 **7. Reasonable cause.** For reasonable cause, the State Tax
29 Assessor, upon timely request for reconsideration pursuant to
30 section 151, shall waive or abate any penalty imposed by this
31 section.

32 A. Reasonable cause includes, but is not limited to, the
33 following:

34 (1) The underpayment or failure to file or pay
35 resulted directly from erroneous information provided
36 by the Bureau of Taxation;

37 (2) The underpayment or failure to file or pay
38 resulted directly from the death or serious illness of
39 the taxpayer or a member of the taxpayer's immediate
40 family;

41 (3) The underpayment or failure to file or pay
42 resulted directly from a natural disaster;

- 2 (4) A return or payment that was due monthly was filed
4 less than one month late and all of the taxpayer's
 returns and payments during the preceding 12 months
 were timely;

- 6 (5) A return or payment that was due other than
8 monthly was filed less than one month late and all of
 the taxpayer's returns and payments during the
10 preceding 3 years were timely;

- 12 (6) The taxpayer has supplied substantial authority
 justifying the failure to file or pay;

- 14 (7) The amount subject to the penalty is de minimus
16 when considered in relation to the amount otherwise
 properly paid, the reason for the failure to file or
18 pay and the taxpayer's compliance history;

- 20 (8) The underpayment or failure to file or pay is
 consistent with the results of a past Bureau of
22 Taxation audit of the taxpayer pursuant to which there
 was no assessment attributable to the taxpayer's
24 similar treatment of that item or its equivalent and
 the taxpayer could reasonably conclude that the
26 auditors agreed with the taxpayer's failure to pay or
 file, provided that the taxpayer has not received
28 notice prior to the period to which the assessment
 relates from the State Tax Assessor that such treatment
30 was not or is no longer considered by the State Tax
 Assessor to be correct; or

- 32 (9) The underpayment or failure to file or pay
34 occurred prior to notification pursuant to section 112
 of a change in, and is consistent with, a prior Bureau
36 of Taxation policy, practice, instruction bulletin or
 rule or the Bureau of Taxation's interpretation of any
38 law, regulation, rule or instruction bulletin.

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

42 B. The following factors alone are not grounds for the
44 waiver or abatement of penalties:

- 46 (1) Misinformation or misunderstanding of the law when
 the taxpayer was not acting in reasonable good faith
48 reliance upon information or professional advice
 provided by another person;

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(2) Personal or business misfortune, including personnel difficulties, reorganization and lack of available funds, when the taxpayer has not made a reasonable good faith effort to ensure that sufficient funds would be available to meet the taxpayer's liability;

(3) Belief that a waiver of federal penalties by the Internal Revenue Service also waives state penalties; and

(4) Mistake and unintentional error when the taxpayer has not taken reasonable precaution to ensure that mistakes and unintentional errors will not occur.

STATEMENT OF FACT

This bill amends the Taxpayer Bill of Rights to provide a number of further taxpayer protections.

This bill clarifies those circumstances in which penalties may be imposed and restructures the penalty amounts.

This bill also revises the standard of review applicable in tax appeals.