

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)



116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1061

H.P. 788

House of Representatives, March 29, 1993

An Act to Clarify Various Tax Procedures and to Protect Taxpayer Rights.

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative NADEAU of Saco.
Cosponsored by Representatives: CARROLL of Gray, DORE of Auburn, NICKERSON of Turner, POULIOT of Lewiston, ST. ONGE of Greene, Senators: BALDACCI of Penobscot, SUMMERS of Cumberland.

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

2
3
4 **Sec. 1. 36 MRSA §271, sub-§3**, as enacted by PL 1985, c. 764, §8, is amended to read:

6 **3. Procedures.** ~~Requests for appeals shall be mailed to the~~
7 ~~chairman of the Appeals to the board must be commenced by filing~~
8 ~~a petition for appeal with the board,--with-a.~~ A copy of the
9 petition must be mailed to the State Tax Assessor and to the
10 assessor of the municipality where the property subject to appeal
11 is located.

12 **Sec. 2. 36 MRSA §271, sub-§3-A** is enacted to read:

14 **3-A. Filing.** Petitions for appeal and all other papers
15 required or permitted to be filed with the board must be filed
16 with the secretary of the board. Filing with the secretary may
17 be accomplished by delivery to the office of the board or by mail
18 addressed to the secretary of the board. All papers to be filed
19 that are transmitted by the United States Postal Service are
20 deemed filed on the day the papers are deposited in the mail as
21 provided in section 153.

24 **Sec. 3. 36 MRSA §843, sub-§§1 and 2**, as amended by PL 1985, c.
25 764, §17, are further amended to read:

26 **1. Municipalities.** ~~Where the~~ If a municipality has adopted
27 a board of assessment review, ~~--if~~ and the assessors or the
28 municipal officers refuse to make the abatement asked for, the
29 applicant may apply in writing to the board of assessment review
30 within 60 days after notice of the decision from which the appeal
31 is being taken or after the application is deemed to have been
32 denied, and, if the board thinks ~~he~~ the applicant is
33 over-assessed, ~~he--shall--be~~ the applicant is granted such
34 reasonable abatement as the board thinks proper. Except with
35 regard to nonresidential property with an equalized municipal
36 value of \$500,000 or greater, either party may appeal from the
37 decision of the board of assessment review directly to the
38 Superior Court, in accordance with Rule 80B of the Maine Rules of
39 Civil Procedure. If the board of assessment review fails to give
40 written notice of ~~their~~ its decision within 60 days of the date
41 the application is filed, unless the applicant agrees in writing
42 to further delay, the application ~~shall--be~~ is deemed denied and
43 the applicant may appeal to Superior Court as if there had been a
44 written denial or the applicant may appeal to the State Board of
45 Property Tax Review ~~by--following--the--procedures--specified--in~~
46 ~~subsection-2.~~

48 **2. Primary assessing areas.** If the chief assessor,
49 municipal officer or the State Tax Assessor refuses to make the
50

2 abatement asked for, the applicant may apply in writing to the
3 State Board of Property Tax Review within 60 days after notice of
4 the decision from which the appeal is being taken or after the
5 application shall ~~be~~ is deemed to have been denied, and if the
6 board thinks ~~he~~ the applicant is over-assessed, ~~he shall be~~ the
7 applicant is granted such reasonable abatement as the board
8 thinks proper. The decision of the State Board of Property Tax
9 Review shall ~~be~~ is deemed final agency action by that board under
10 the Maine Administrative Procedure Act. ~~Appeals to the State~~
11 ~~Board of Property Tax Review shall be directed to the Chairman of~~
12 ~~the State Board of Property Tax Review, who shall convene the~~
13 ~~board to hear the appeal and shall notify all parties of the time~~
14 ~~and place thereof.~~

15 **Sec. 4. 36 MRSA §844, sub-§1.** as amended by PL 1985, c. 819,
16 Pt. A, §§38 and 39, is further amended to read:

17 **1. Municipalities without board of assessment review.**
18 Except where when the municipality has adopted a board of
19 assessment review or has been designated as a primary assessing
20 area, if the assessors or the municipal officers refuse to make
21 the abatement asked for, the applicant may apply to the county
22 commissioners within 60 days after notice of the decisions from
23 which the appeal is being taken or within 60 days after the
24 application is deemed to have been denied. If the commissioners
25 think that the applicant is over-assessed, the applicant shall ~~be~~
26 is granted such reasonable abatement as the commissioners think
27 proper. If the applicant has paid the tax, ~~he shall~~ the
28 applicant must be reimbursed out of the municipal treasury, with
29 costs in either case. If the applicant fails, the commissioners
30 shall allow costs to the municipality, taxed as in a civil action
31 in the Superior Court, and issue their warrant of distress
32 against ~~him~~ the applicant for collection of such amount as may be
33 due the municipality. The commissioners may require the
34 assessors or municipal clerk to produce the valuation by which
35 the assessment was made or a copy of it. Either party may appeal
36 from the decision of the county commissioners to the Superior
37 Court, in accordance with the Maine Rules of Civil Procedure,
38 Rule 80B. If the county commissioners fail to give written
39 notice of their decision within 60 days of the date the
40 application is filed, unless the applicant agrees in writing to
41 further delay, the application shall ~~be~~ is deemed denied and the
42 applicant may appeal to the Superior Court as if there had been a
43 written denial or the applicant may appeal to the State Board of
44 Property Tax Review ~~by following the procedures specified in~~
45 ~~section 843, subsection 2.~~

46 **Sec. 5. 36 MRSA §5280,** as amended by PL 1977, c. 694, §726,
47 is repealed and the following enacted in its place:
48
49
50

2
3 **§5280. Refund claim**

4 Every claim for refund must be filed with the State Tax
5 Assessor in writing and state the specific grounds upon which it
6 is founded. If the taxpayer has so requested the refund claim,
7 the State Tax Assessor shall hold an informal conference with the
8 taxpayer to receive additional information and to hear arguments
9 regarding the refund claim. The State Tax Assessor shall give
10 the taxpayer 10 working days' notice of the time and place of the
11 conference. However, the conference may be held with less than
12 10 working days' notice if a mutually convenient time and place
13 can be arranged between the petitioner and the State Tax
14 Assessor. The consideration of the refund claim, with or without
15 an informal conference, is not an adjudicatory proceeding within
16 the meaning of that term in the Maine Administrative Procedure
17 Act.

18 The State Tax Assessor's decision on the refund claim must
19 be mailed to the taxpayer by certified or registered mail and the
20 decision must set forth briefly the State Tax Assessor's findings
21 of fact and the basis of decision in each case decided in whole
22 or in part adversely to the taxpayer. The State Tax Assessor's
23 decision on the refund claim, or a deemed disallowance of the
24 refund claim at the taxpayer's election under section 5282,
25 constitutes final agency action subject to review by the Superior
26 Court in accordance with the Maine Administrative Procedure Act,
27 except that Title 5, sections 11006 and 11007 do not apply. The
28 Superior Court shall conduct a de novo hearing and make a de novo
29 determination of the merits of the case. It shall make its own
30 determination as to all questions of fact or law. The Superior
31 Court shall enter such orders and decrees as the case may
32 require. The burden of proof is on the taxpayer.

34 Sec. 6. 36 MRSA §5282, as enacted by P&SL 1969, c. 154, §F,
35 §1, is repealed and the following enacted in its place:

36 **§5282. Refund claim deemed disallowed**

38 1. Election to treat claim as disallowed. If the State Tax
39 Assessor fails to mail to the taxpayer a decision on any refund
40 claim within 6 months after the claim is filed, the taxpayer may
41 elect, but is not obligated, to deem the refund claim
42 disallowed. The taxpayer may make the election regardless of
43 whether the taxpayer has requested an informal conference under
44 section 5280.

46 2. Manner and time of election. The taxpayer elects to
47 deem a refund claim disallowed by filing a petition for review of
48 the disallowance under the Maine Administrative Procedure Act.
49 The taxpayer may make this election at any time after the
50

2 expiration of the 6-month period set out in subsection 1 until a
3 decision on the refund claim is received by the taxpayer.

4 **Sec. 7. 38 MRSA §341-D, sub-§4**, as enacted by PL 1989, c. 890,
5 Pt. A, §13 and affected by §40, is amended to read:

6
7 **4. Appeal or review.** The board shall review, may hold a
8 hearing at its discretion on and may affirm, amend or reverse any
9 of the following:

10
11 A. Final license or permit decisions made by the
12 commissioner when a person aggrieved by a decision of the
13 commissioner appeals that decision to the board within 30
14 days of the filing of the decision with the board staff.
15 The board staff shall give written notice to persons that
16 have asked to be notified of the decision. The board may
17 allow the record to be supplemented when it finds that the
18 evidence offered is relevant and material and that:

19 (1) An interested party seeking to supplement the
20 record has shown due diligence in bringing the evidence
21 to the licensing process at the earliest possible time;
22 or

23 (2) The evidence is newly discovered and could not, by
24 the exercise of diligence, have been discovered in time
25 to be presented earlier in the licensing process.

26
27 The board is not bound by the commissioner's findings of
28 fact or conclusions of law but may adopt, modify or reverse
29 findings of fact or conclusions of law established by the
30 commissioner. Any changes made by the board under this
31 paragraph must be based upon the board's review of the
32 record, any supplemental evidence admitted by the board and
33 any hearing held by the board;

34
35 B. License or permit decisions made by the commissioner
36 that the board votes to review within 30 days of the next
37 regularly scheduled board meeting following written
38 notification to the board of the commissioner's decision.
39 The procedures for review are the same as provided under
40 paragraph A; and

41
42 C. License or permit decisions appealed to the board under
43 another law. Unless the law provides otherwise, the
44 standard of review is the same as provided under paragraph A.

45
46 For the purposes of this subsection, the term "license or permit"
47 includes any license, permit, order, approval, certification or
48 registration issued by the commissioner or the department.
49
50

