

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1371

H.P. 1010

House of Representatives, March 31, 2011

### An Act To Promote Fair and Efficient Resolutions in Tax Disputes

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Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script, reading 'Heather J.R. Priest'.

HEATHER J.R. PRIEST  
Clerk

Presented by Representative KNIGHT of Livermore Falls.  
Cosponsored by Senator TRAHAN of Lincoln and  
Representatives: BERRY of Bowdoinham, BURNS of Whiting, CHASE of Wells, CLARK of  
Easton, FLEMINGS of Bar Harbor, HARMON of Palermo, KESCHL of Belgrade,  
WATERHOUSE of Bridgton.

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

2 **Sec. 1. 36 MRSA §143, first ¶**, as amended by PL 1999, c. 708, §7, is further  
3 amended to read:

4 The State Tax Assessor may compromise a tax liability arising under this Title upon  
5 the grounds of doubt as to liability or doubt as to collectibility, or both. Upon acceptance  
6 by the assessor of an offer in compromise, the liability of the taxpayer in question is  
7 conclusively settled and neither the taxpayer nor the assessor may reopen the case except  
8 by reason of falsification or concealment of assets by the taxpayer, fraud or mutual  
9 mistake of a material fact ~~or if, in the opinion of the assessor, justice requires~~. The  
10 decision of the assessor to reject an offer in compromise is not subject to review under  
11 section 151. The assessor's authority to compromise a tax liability pursuant to this  
12 section is separate from and in addition to the assessor's authority to cancel or abate a tax  
13 liability pursuant to section 142.

14 **Sec. 2. 36 MRSA §151**, as amended by PL 2003, c. 242, §1, is repealed and the  
15 following enacted in its place:

16 **§151. Review of decisions of State Tax Assessor**

17 **1. Petition for reconsideration.** A person who is subject to an assessment by the  
18 State Tax Assessor or entitled by law to receive notice of a determination of the assessor  
19 and who is aggrieved as a result of that action may request in writing, within 30 days after  
20 receipt of notice of the assessment or the determination, reconsideration by the assessor  
21 of the assessment or the determination. If a person receives notice of an assessment and  
22 does not file a petition for reconsideration within the specified time period, a review is  
23 not available in Superior Court regardless of whether the taxpayer subsequently makes  
24 payment and requests a refund.

25 **2. Reconsideration by division.** If a petition for reconsideration is filed within the  
26 specified time period, the assessor shall reconsider the assessment or the determination as  
27 provided in this subsection.

28 A. Upon receipt by the assessor, all petitions for reconsideration must be forwarded  
29 for review and response to the division in the bureau from which the determination  
30 issued.

31 B. Within 90 days of receipt of the petition for reconsideration by the responding  
32 division, the division shall approve or deny, in whole or in part, the relief requested.  
33 Prior to rendering its decision and during the 90 days, the division may attempt to  
34 resolve issues with the petitioner through informal discussion and settlement  
35 negotiations with the objective of narrowing the issues for an appeals conference or  
36 court review, and may concede or settle individual issues based on the facts and the  
37 law, including the hazards of litigation. By mutual consent of the division and the  
38 petitioner, the 90 days may be extended for good cause, such as to allow further  
39 factual investigation or litigation of an issue by that or another taxpayer pending in  
40 court.

1 C. If the matter between the division and the petitioner is not resolved within the  
2 90-day period, and any extension thereof, the matter must be forwarded to the appeals  
3 office.

4 D. A reconsideration by the division is not an adjudicatory proceeding within the  
5 meaning of that term in the Maine Administrative Procedure Act.

6 **Sec. 3. 36 MRSA §151-A, sub-§3** is enacted to read:

7 **3. Notice provided to attorney.** A taxpayer does not have notice of a determination  
8 or other action by the assessor if the assessor has been presented with a valid power of  
9 attorney and does not comply with that taxpayer's requests that the assessor communicate  
10 with the person designated by the taxpayer as attorney in accordance with the taxpayer's  
11 specifications, including by sending all notices and other correspondence with the  
12 taxpayer to the attorney in lieu of or in addition to sending such correspondence to the  
13 taxpayer, until such time as the person's attorney receives actual notice of such  
14 determination or other action.

15 **Sec. 4. 36 MRSA §151-B** is enacted to read:

16 **§151-B. Independent Appeals Office**

17 **1. Office established.** There is established within the bureau the Independent  
18 Appeals Office, referred to in this chapter as "the appeals office."

19 **2. Composition of appeals office; Chief Appeals Officer.** The appeals office  
20 consists of the Chief Appeals Officer, at least one administrative staff person and other  
21 appeals officers as designated by the Chief Appeals Officer.

22 **3. Appointment.** The Chief Appeals Officer must be appointed by the assessor and  
23 shall manage the work of the appeals office, including designating an appeals officer to  
24 preside over each matter forwarded to the appeals office pursuant to section 151,  
25 subsection 2, paragraph C. Each appeals officer must be a citizen of the United States  
26 and must have substantial knowledge of the tax laws.

27 **4. Appeals.** An appeal of a decision arising from a petition for reconsideration filed  
28 pursuant to section 151, subsection 1 must be conducted pursuant to this subsection.

29 A. If requested by the petitioner in the petition for reconsideration, the appeals office  
30 shall hold an appeals conference to receive additional information and to hear  
31 arguments regarding the protested assessment or determination. The petitioner shall  
32 pay a processing fee of \$100 for each petition that proceeds to an appeals conference,  
33 except that this fee is waived if the total amount in controversy is less than \$5,000 or  
34 when good cause, as determined by the Chief Appeals Officer, for waiver is shown.

35 The appeals office shall provide the petitioner with at least 10 working days' notice of  
36 the date, time and place of the appeals conference. The appeals conference may be  
37 held with fewer than 10 working days' notice if a mutually convenient time and place  
38 can be arranged.

1 B. An appeals officer shall preside over the appeals conference. The appeals officer  
2 has all the authority of the assessor with respect to the conduct of proceedings of the  
3 appeals conference, including, but not limited to, the power to question any person  
4 who testifies and to direct the course of the appeal.

5 C. If the petitioner does not include a request for an appeals conference in the  
6 petition, the appeals officer shall determine the matter based on written submissions  
7 by the petitioner and the division within the bureau making the original  
8 determination.

9 D. Both the petitioner and the responding division may submit the following to the  
10 appeals officer whether or not an appeals conference has been requested: written  
11 testimony in the form of an affidavit; documentary evidence; and written legal  
12 argument or written factual argument, or both. In addition, if an appeals conference  
13 is held, both the petitioner and the responding division may present oral testimony or  
14 oral legal argument, or both. The appeals officer need not observe the rules of  
15 evidence observed by courts, but shall observe the rules of privilege recognized by  
16 law. If the appeals officer considers it appropriate, the appeals officer may encourage  
17 the petitioner and the responding division to resolve disputed issues through  
18 settlement or stipulation. The appeals officer may limit the issues to be heard or vary  
19 any procedure adopted for the conduct of the appeals conference if the parties agree  
20 to that limitation.

21 E. Except when otherwise provided by law, the petitioner has the burden of proving,  
22 by a preponderance of the evidence, that the assessor has erred in applying or  
23 interpreting the relevant law.

24 F. The appeals officer shall exercise independent judgment. The appeals officer may  
25 not have any ex parte communications with any person, including the petitioner, the  
26 responding division, the assessor or any other employee of the bureau except those  
27 employees in the appeals office; however, the appeals officer may have ex parte  
28 communication limited to questions that involve ministerial or administrative matters  
29 that do not address the substance of the issues or position taken by the petitioner or  
30 the responding division.

31 G. The appeals officer shall render a decision based upon the evidence and argument  
32 presented to the appeals officer by parties to the proceeding. The decision must be in  
33 written form and must state findings of fact and conclusions of law. The decision of  
34 the appeals officer is deemed the assessor's determination on reconsideration and is  
35 not subject to review or revision by the assessor or any employee of the bureau  
36 outside of the appeals office. Notice of the final decision or order to the petitioner  
37 must be made in accordance with section 111, subsection 2. Notice of the final  
38 decision or order must be made to the responding division via the state interoffice  
39 mail system.

40 H. The appeal proceeding, with or without the appeals conference, is not an  
41 adjudicatory proceeding within the meaning of that term in the Maine Administrative  
42 Procedure Act.

43 **5. Denial of appeal.** If the requested appeal involves a denial or deemed denial of a  
44 refund claim, a refund claim with respect to which a conference has been requested under

1 section 5280 or an assessment that is paid in full or part and the appeals office fails to  
2 mail to the petitioner a decision on the appeal within 9 months after the petition for  
3 reconsideration was filed, the petitioner may elect but is not obligated to deem the appeal  
4 denied. The petitioner elects to deem the appeal denied by filing in Superior Court a  
5 petition for review of the deemed denial. The deemed denial constitutes final agency  
6 action and is subject to court review as provided in subsection 6. The petitioner may not  
7 make the deemed denial election after either the appeals officer's decision has been  
8 received by the petitioner or the expiration of 9 years following the filing of the  
9 reconsideration petition, whichever occurs first. Notwithstanding any other provision of  
10 law, a claim for credit or refund of any tax imposed under this Title is deemed denied 10  
11 years after it was filed if the claim has not previously been allowed or denied as final  
12 agency action. A deemed denial constitutes final agency action.

13 **6. Review by court.** The decision of the appeals officer on the petition for appeal  
14 constitutes the assessor's final determination and final agency action, which is subject to  
15 review by the Superior Court in accordance with the Maine Administrative Procedure  
16 Act, except that Title 5, sections 11006 and 11007 do not apply. Upon petition filed by  
17 either the taxpayer or the assessor, the Superior Court shall conduct a de novo hearing  
18 and make a de novo determination of the merits of the case. Either the taxpayer or the  
19 assessor may raise on appeal in Superior Court any facts, arguments or issues that relate  
20 to the assessor's decision on the petition for reconsideration, regardless of whether the  
21 facts, arguments or issues were raised during the reconsideration proceeding being  
22 appealed, as long as the facts, arguments or issues are not barred by any other provision  
23 of law. The Superior Court shall make its own determination as to all questions of fact or  
24 law, regardless of whether the questions of fact or law were raised during the petition for  
25 reconsideration proceeding. The Superior Court shall enter such orders and decrees as  
26 the case may require. The burden of proof is on the taxpayer, except as otherwise  
27 provided by law.

28 **Sec. 5. 36 MRSA §151-C** is enacted to read:

29 **§151-C. Taxpayer advocate**

30 **1. Appointment.** The assessor shall appoint the taxpayer advocate.

31 **2. Duties and responsibilities.** The duties and responsibilities of the taxpayer  
32 advocate are to:

33 A. Assist taxpayers in resolving problems with the bureau;

34 B. Identify areas in which taxpayers have problems in dealings with the bureau;

35 C. Propose changes in the administrative practices of the bureau to mitigate  
36 problems identified under paragraph B; and

37 D. Identify legislative changes that may be appropriate to mitigate problems  
38 identified under paragraph B.

39 **3. Annual report.** Beginning in 2012, the taxpayer advocate shall prepare and  
40 submit by August 1st an annual report of activities of the taxpayer advocate to the

1 Governor, the assessor and the joint standing committee of the Legislature having  
2 jurisdiction over taxation matters.

3 **4. Investigation.** The taxpayer advocate may investigate complaints affecting  
4 taxpayers generally or any particular taxpayer or group of taxpayers and, when  
5 appropriate, make recommendations to the assessor with respect to these complaints. The  
6 assessor shall provide a formal response to all recommendations submitted to the assessor  
7 by the taxpayer advocate within 3 months after submission to the assessor.

8 **5. Response.** The assessor shall establish procedures to provide for a formal  
9 response to all recommendations submitted to the assessor by the taxpayer advocate.

10 **Sec. 6. 36 MRSA §191, sub-§2, ¶PP,** as corrected by RR 2009, c. 2, §107, is  
11 amended to read:

12 PP. The disclosure to the Department of Conservation of information contained on  
13 the commercial forestry excise tax return filed pursuant to section 2726, such as the  
14 landowner name, address and acreage, to facilitate the administration of chapter 367;  
15 ~~and~~

16 **Sec. 7. 36 MRSA §191, sub-§2, ¶QQ,** as reallocated by RR 2009, c. 2, §108, is  
17 amended to read:

18 QQ. The disclosure of registration, reporting and payment information to the  
19 Department of Agriculture, Food and Rural Resources necessary for the  
20 administration of Title 32, chapter 28-;

21 **Sec. 8. 36 MRSA §191, sub-§2, ¶RR** is enacted to read:

22 RR. The production in court on behalf of the assessor or any other party to an action  
23 or proceeding under this Title, or the production pursuant to a discovery request  
24 under the Maine Rules of Civil Procedure or a request under the freedom of access  
25 laws, of any reconsideration decision or other document setting forth or discussing  
26 the assessor's practice, interpretation of law or application of the law to particular  
27 facts, in redacted format so as not to reveal information from which the taxpayer may  
28 be identified. A person requesting the production of any such document shall pay the  
29 costs associated with the redacting of information from which the taxpayer or other  
30 interested party may be identified; and

31 **Sec. 9. 36 MRSA §191, sub-§2, ¶SS** is enacted to read:

32 SS. The disclosure by the assessor to the taxpayer advocate under section 151-C of  
33 information related to a petition for reconsideration filed by a taxpayer pursuant to  
34 section 151. The taxpayer advocate is prohibited from disclosing information  
35 obtained pursuant to this paragraph other than to the particular taxpayer to whom the  
36 information pertains.

37 **Sec. 10. Creation of Independent Appeals Office; elimination of appellate**  
38 **division; transition provisions.** The following provisions govern the transition of the  
39 appellate division within the Department of Administrative and Financial Services,

1 Bureau of Revenue Services to the Independent Appeals Office within the Department of  
2 Administrative and Financial Services, Bureau of Revenue Services.

3 1. The appellate division is eliminated and the Independent Appeals Office is created  
4 as of July 1, 2012.

5 2. The State Tax Assessor shall appoint the qualified appeals officers and designate  
6 the Chief Appeals Officer pursuant to the Maine Revised Statutes, Title 36, section 151-B  
7 no later than July 1, 2012. The number of appeals officers appointed must be the same  
8 number as reconsideration hearing officer positions in the appellate division authorized as  
9 of July 1, 2011. The appeals officers have the same rate of compensation as the former  
10 reconsideration hearing officers.

11 3. To the extent not inconsistent with the provisions of Title 36, section 151-B, all  
12 existing rules, regulations and procedures in effect, in operation or adopted in or by the  
13 appellate division are hereby declared in effect and continue in effect until rescinded,  
14 revised or amended by the proper authority.

15 4. To the extent not inconsistent with the provisions of Title 36, section 151-B, all  
16 existing contracts, agreements and compacts currently in effect in the appellate division  
17 continue in effect.

18 5. All records, property and equipment previously belonging to or allocated for the  
19 use of the appellate division become part of the property of the Independent Appeals  
20 Office.

21 6. All existing forms, licenses, letterheads and similar items bearing the name of or  
22 referring to "the appellate division" may be used by the Independent Appeals Office until  
23 existing supplies of those items are exhausted.

24 7. Any funds appropriated for use by the appellate division must be transferred for  
25 use by the Independent Appeals Office.

26 **Sec. 11. Creation of taxpayer advocate; elimination of taxpayer advocate**  
27 **in Bureau of Revenue Services; transition provisions.** The following provisions  
28 govern the creation of the position of the taxpayer advocate and the elimination of the  
29 taxpayer advocate position within the Department of Administrative and Financial  
30 Services, Bureau of Revenue Services.

31 1. The assessor shall appoint the taxpayer advocate pursuant to the Maine Revised  
32 Statutes, Title 36, section 151-C no later than July 1, 2012. The level of compensation  
33 for the taxpayer advocate must be the same as for the former taxpayer advocate in the  
34 bureau.

35 2. To the extent not inconsistent with the provisions of Title 36, section 151-C, all  
36 existing rules, regulations and procedures in effect, in operation or adopted in or by the  
37 taxpayer advocate in the bureau are hereby declared in effect and continue in effect until  
38 rescinded, revised or amended by the proper authority.



1 3. To the extent not inconsistent with the provisions of Title 36, section 151-C, all  
2 existing contracts, agreements and compacts currently in effect for the taxpayer advocate  
3 in the bureau continue in effect.

4 4. All records, property and equipment previously belonging to or allocated for the  
5 use of the taxpayer advocate in the bureau become part of the property of the independent  
6 taxpayer advocate.

7 5. Any funds appropriated for use by the taxpayer advocate in the bureau must be  
8 transferred for use by the independent taxpayer advocate.

9 **Sec. 12. Review and revision of cross-references.** The Department of  
10 Administrative and Financial Services, Bureau of Revenue Services shall review the  
11 provisions of the Maine Revised Statutes that permit a taxpayer to appeal an assessment  
12 made by or decision of the State Tax Assessor. The bureau shall submit emergency  
13 legislation by January 15, 2012 to the Joint Standing Committee on Taxation to ensure  
14 that those provisions comply with the petition for reconsideration and appeals process as  
15 amended in this legislation and to provide procedures to transition cases pending in the  
16 appellate division to the Independent Appeals Office as established in the Maine Revised  
17 Statutes, Title 36, section 151-B. The committee shall submit legislation to the Second  
18 Regular Session of the 125th Legislature related to the recommendations of the bureau.

19 **Sec. 13. Effective date.** Except for that section that requires the Department of  
20 Administrative and Financial Services, Bureau of Revenue Services to submit legislation  
21 correcting cross-references, this Act takes effect July 1, 2012, except that the assessor is  
22 authorized to appoint the qualified appeals officers and designate the Chief Appeals  
23 Officer pursuant to the Maine Revised Statutes, Title 36, section 151-B and the taxpayer  
24 advocate pursuant to Title 36, section 151-C prior to July 1, 2012 as long as those  
25 appointments do not take effect until July 1, 2012.

## 26 SUMMARY

27 This bill eliminates the current appellate division within the Department of  
28 Administrative and Financial Services, Bureau of Revenue Services and replaces it with  
29 the Independent Appeals Office. The bill changes provisions relating to the position of  
30 taxpayer advocate in the bureau. The funds used to support existing positions that are  
31 eliminated are transferred to support the newly created positions.

32 The bill amends the procedure for administrative appeals resulting from assessments  
33 and other determinations of the State Tax Assessor by:

34 1. Providing a 90-day period within which the division that issued the determination  
35 and the taxpayer may attempt to settle disputed issues before a reconsideration conference  
36 is scheduled. Currently, after receipt of an assessment, the taxpayer has 30 days in which  
37 to seek reconsideration, after which the taxpayer may have little or no opportunity to  
38 discuss the issue with the auditors for purposes of settling issues. This 90-day period is  
39 intended to allow the taxpayer and auditors to obtain a better understanding of their  
40 respective positions and to informally share information for purposes of attempting to

1 settle issues before incurring substantial costs of developing a case for administrative or  
2 judicial review; and

3 2. Establishing a process for the Independent Appeals Office to hear and decide  
4 reconsideration requests, which are currently decided by the appellate division of the  
5 Bureau of Revenue Services but are subject to review and input by the State Tax  
6 Assessor, and by other members of the Bureau of Revenue Services, including the  
7 division of the Bureau of Revenue Services that issued the assessment. Pursuant to this  
8 bill, appeals officers are not permitted ex parte communications with other employees of  
9 the Bureau of Revenue Services or the petitioner. Any additional costs of the  
10 Independent Appeals Office may be funded by the \$100 fee paid by the petitioner for  
11 appeals conferences.

12 The taxpayer advocate established in the bill is modeled after the Taxpayer Advocate  
13 Service offered by the Federal Government to assist taxpayers in relation to the federal  
14 Internal Revenue Service. The taxpayer advocate assists taxpayers in relation to the  
15 Bureau of Revenue Services, identifies issues and suggests solutions to the Bureau of  
16 Revenue Services and reports on the taxpayer advocate's activities to the joint standing  
17 committee of the Legislature having jurisdiction over taxation matters in order to provide  
18 information to assist the Legislature in determining whether additional legislation is  
19 needed to improve the operations of the Bureau of Revenue Services.

20 The bill also provides that when the State Tax Assessor has failed to comply with the  
21 taxpayer's requests that a representative with a valid power of attorney authorized to  
22 receive communications addressed to the taxpayer be notified of a determination, then the  
23 taxpayer is considered to have not received notice of a determination until such time as  
24 the representative receives notice.

25 The bill also preserves the confidentiality of taxpayer information by allowing  
26 taxpayers and others, upon specific request, to obtain copies of reconsideration decisions  
27 with identifying information eliminated. The costs of eliminating identifying information  
28 must be paid by the person making the request. The State Tax Assessor is also permitted  
29 to provide the Taxpayer Advocate access to information necessary to assist taxpayers.

30 The bill provides transition provisions and an effective date of July 1, 2012.