

MAINE STATE LEGISLATURE

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Date: 3/29/12

L.D. 1750
(Filing No. H-861)

minority
TAXATION

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "B" to H.P. 1291, L.D. 1750, Bill, "An Act To Create the Maine Board of Tax Appeals"

Amend the bill by striking out the title and substituting the following:

'An Act To Restore the Maine Tax Appeals Process'

Amend the bill by striking out everything after the title and before the summary and inserting the following:

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Independent Appeals Office, created in Public Law 2011, chapter 439, is to assume the responsibility of overseeing state tax appeals on July 1, 2012; and

Whereas, this Act eliminates the Independent Appeals Office and restores the state tax appeals process that was in place prior to enactment of Public Law 2011, chapter 439; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 36 MRSA §143, first ¶, as amended by PL 2011, c. 439, §1 and affected by §12, is further amended to read:

The State Tax Assessor may compromise a tax liability arising under this Title upon the grounds of doubt as to liability or doubt as to collectibility, or both. Upon acceptance by the assessor of an offer in compromise, the liability of the taxpayer in question is conclusively settled and neither the taxpayer nor the assessor may reopen the case except by reason of falsification or concealment of assets by the taxpayer, ~~fraud~~ or mutual mistake of a material fact or if, in the opinion of the assessor, justice requires. The

COMMITTEE AMENDMENT

1 decision of the assessor to reject an offer in compromise is not subject to review under
2 section 151. The assessor's authority to compromise a tax liability pursuant to this
3 section is separate from and in addition to the assessor's authority to cancel or abate a tax
4 liability pursuant to section 142.

5 **Sec. 2. 36 MRSA §151**, as amended by PL 2011, c. 380, Pt. J, §5 and repealed and
6 replaced by c. 439, §2 and affected by §12, is repealed and the following enacted in its
7 place:

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

9 A person who is subject to an assessment by the State Tax Assessor or entitled by law
10 to receive notice of a determination of the assessor and who is aggrieved by that action
11 may request in writing, within 60 days after receipt of notice of the assessment or the
12 determination, reconsideration by the assessor of the assessment or the determination. If a
13 person who receives notice of an assessment does not request reconsideration of the
14 assessment in writing within 60 days, the assessor may not reconsider the assessment
15 pursuant to this section and no review is available in Superior Court regardless of whether
16 the person subsequently makes payment and requests a refund.

17 If a request for reconsideration is filed within the specified time period, the assessor
18 shall reconsider the assessment or the determination. If the petitioner has so requested in
19 the petition, the assessor shall hold an informal conference with the petitioner to receive
20 additional information and to hear arguments regarding the protested assessment or
21 determination. The assessor shall give the petitioner 10 working days' notice of the time
22 and place of the conference. The conference may be held with less than 10 working days'
23 notice if a mutually convenient time and place can be arranged. The reconsideration, with
24 or without an informal conference, is not an "adjudicatory proceeding" within the
25 meaning of that term in the Maine Administrative Procedure Act. If the requested
26 reconsideration involves a denial or deemed denial of a refund claim, a refund claim with
27 respect to which a conference has been requested under section 5280 or an assessment
28 that is paid in full or part and the assessor fails to mail to the taxpayer a decision on the
29 reconsideration within 9 months after the reconsideration request was filed, the taxpayer
30 may elect but is not obligated to deem the request for reconsideration denied. The
31 taxpayer elects to deem the reconsideration denied by filing in Superior Court a petition
32 for review of the deemed denial. The deemed denial constitutes final agency action and is
33 subject to court review as otherwise provided in this section. The taxpayer may not make
34 the deemed denial election after either the assessor's reconsideration decision has been
35 received by the taxpayer or the expiration of 9 years following the filing of the
36 reconsideration request, whichever occurs first. Notwithstanding any other provision of
37 law, any claim for credit or refund of any tax imposed under this Title is deemed denied
38 10 years after it was filed if the claim has not previously been allowed or denied as final
39 agency action. A deemed denial constitutes final agency action.

40 The assessor's decision on reconsideration must be mailed to the taxpayer or the
41 taxpayer's designated representative by certified or registered mail and the decision must
42 set forth briefly the assessor's findings of fact and the basis of decision in each case
43 decided in whole or in part adversely to the taxpayer. The assessor's decision on
44 reconsideration constitutes final agency action that is subject to review by the Superior
45 Court in accordance with the Maine Administrative Procedure Act, except that Title 5,

1 sections 11006 and 11007 do not apply. The Superior Court shall conduct a de novo
2 hearing and make a de novo determination of the merits of the case. Either the taxpayer
3 or the assessor may raise on appeal in Superior Court any facts, arguments or issues that
4 relate to the assessor's decision on reconsideration, regardless of whether the facts,
5 arguments or issues were raised during the reconsideration proceeding being appealed, as
6 long as the facts, arguments or issues are not barred by any other provision of law. The
7 court shall make its own determination as to all questions of fact or law, regardless of
8 whether the questions of fact or law were raised during the reconsideration proceeding.
9 The Superior Court shall enter such orders and decrees as the case may require. The
10 burden of proof is on the taxpayer.

11 **Sec. 3. 36 MRSA §151-B**, as enacted by PL 2011, c. 439, §3 and affected by §12,
12 is repealed.

13 **Sec. 4. PL 2011, c. 439, §9** is repealed.

14 **Sec. 5. PL 2011, c. 439, §11** is repealed and the following enacted in its place:

15 **Sec. 11. Cost administration.** The Commissioner of Administrative and
16 Financial Services shall manage the implementation of this Act to ensure that this Act is
17 implemented within existing resources. The following principles govern costs associated
18 with this Act.

19 1. The funding associated with the current taxpayer advocate of the Department of
20 Administrative and Financial Services, Bureau of Revenue Services must be used to fund
21 the new taxpayer advocate hired by the Commissioner of Administrative and Financial
22 Services and the new taxpayer advocate must have the same salary range as the current
23 taxpayer advocate. The commissioner shall take any steps necessary to ensure that the
24 costs associated with the new taxpayer advocate do not exceed the costs associated with
25 the current taxpayer advocate prior to enactment of this Act.

26 2. No additional positions within the Department of the Attorney General or the
27 Department of Administrative and Financial Services, Bureau of Revenue Services may
28 be created as a result of this Act.

29 **Sec. 6. PL 2011, c. 439, §12** is amended to read:

30 **Sec. 12. Effective date.** This Act takes effect July 1, 2012, except that the
31 Commissioner of Administrative and Financial Services is authorized to hire ~~the Chief~~
32 ~~Appeals Officer pursuant to the Maine Revised Statutes, Title 36, section 151-B and~~ the
33 taxpayer advocate pursuant to the Maine Revised Statutes, Title 36, section 151-C prior
34 to July 1, 2012 as long as ~~these appointments do~~ the appointment does not take effect
35 until July 1, 2012.

36 **Sec. 7. Appropriations and allocations.** The following appropriations and
37 allocations are made.

38 **ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF**

39 **Departmentwide - DAFS 0013**

1 Initiative: Provides appropriations for the Personal Services and related All Other costs of
 2 one Staff Attorney - Taxpayer Advocate position within the Department of
 3 Administrative and Financial Services.

4	GENERAL FUND	2011-12	2012-13
5	POSITIONS - LEGISLATIVE COUNT	0.000	1.000
6	Personal Services	\$0	\$89,189
7	All Other	\$0	\$13,378
8			
9	GENERAL FUND TOTAL	<u>\$0</u>	<u>\$102,567</u>

10 **Revenue Services, Bureau of 0002**

11 Initiative: Eliminates appropriations for the Personal Services and related All Other costs
 12 of one Staff Attorney - Taxpayer Advocate position within the Department of
 13 Administrative and Financial Services, Bureau of Revenue Services.

14	GENERAL FUND	2011-12	2012-13
15	POSITIONS - LEGISLATIVE COUNT	0.000	(1.000)
16	Personal Services	\$0	(\$89,189)
17	All Other	\$0	(\$13,378)
18			
19	GENERAL FUND TOTAL	<u>\$0</u>	<u>(\$102,567)</u>

20	ADMINISTRATIVE AND FINANCIAL		
21	SERVICES, DEPARTMENT OF		
22	DEPARTMENT TOTALS	2011-12	2012-13
23			
24	GENERAL FUND	\$0	\$0
25			
26	DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$0</u>

27 **Emergency clause.** In view of the emergency cited in the preamble, this
 28 legislation takes effect when approved.'

29 **SUMMARY**

30 This amendment, which is the minority report, restores the tax appeals process that
 31 was in place prior to enactment of Public Law 2011, chapter 439. It retains the provisions
 32 of Public Law 2011, chapter 439 pertaining to the taxpayer advocate. This amendment
 33 adds an appropriations and allocations section.

34 **FISCAL NOTE REQUIRED**

35 (See attached)



125th MAINE LEGISLATURE

LD 1750

LR 2549(03)

An Act To Create the Maine Board of Tax Appeals

Fiscal Note for Bill as Amended by Committee Amendment "B" (H-861)

Committee: Taxation

Fiscal Note Required: Yes

Fiscal Note

	FY 2011-12	FY 2012-13	Projections FY 2013-14	Projections FY 2014-15
Net Cost (Savings)				
General Fund	\$0	\$15,000	\$15,000	\$15,000
Appropriations/Allocations				
General Fund	\$0	\$0	\$0	\$0
Revenue				
General Fund	\$0	(\$15,000)	(\$15,000)	(\$15,000)

Fiscal Detail and Notes

The bill restores the appeals process to the process that was in place prior to the enactment of Public Law 2011, chapter 439. The bill provides an appropriation in FY 2012-13 of \$102,567 to the Department of Administrative and Financial Services to fund the personnel and related costs of one staff attorney - taxpayer advocate position and deappropriates the same amount to Maine Revenue Services to remove funding for a staff attorney - taxpayer advocate position. The bill would result in a \$15,000 annual reduction in revenue from filing fees beginning in FY 2012-13.