

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

SECOND REGULAR SESSION-2012

Legislative Document

No. 1750

H.P. 1291

House of Representatives, January 9, 2012

An Act To Create the Maine Board of Tax Appeals

(EMERGENCY)

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative KNIGHT of Livermore Falls.

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

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

5 **Whereas,** this Act eliminates the Independent Appeals Office and establishes the
6 Maine Board of Tax Appeals in its place and, to comply with federal law, removes
7 provisions that allow for the dissemination of confidential tax information; and

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

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

13 **Sec. 1. 5 MRSA §12004-B, sub-§10** is enacted to read:

14 **10.**

15 Maine Board of Tax Appeals \$100/Day 36 MRSA §151-D

16 **Sec. 2. 36 MRSA §111, sub-§1-C** is enacted to read:

17 **1-C. Board.** "Board" means the Maine Board of Tax Appeals as established in Title
18 5, section 12004-B, subsection 10.

19 **Sec. 3. 36 MRSA §151,** as amended by PL 2011, c. 380, Pt. J, §5 and repealed and
20 replaced by c. 439, §2 and affected by §12, is repealed and the following enacted in its
21 place:

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

23 **1. Petition for reconsideration.** A person who is subject to an assessment by the
24 State Tax Assessor or entitled by law to receive notice of a determination of the assessor
25 and who is aggrieved as a result of that action may request in writing, within 60 days after
26 receipt of notice of the assessment or the determination, reconsideration by the assessor
27 of the assessment or the determination. If a person receives notice of an assessment and
28 does not file a petition for reconsideration within the specified time period, a review is
29 not available in Superior Court regardless of whether the taxpayer subsequently makes
30 payment and requests a refund.

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

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

4 B. Within 90 days of receipt of the petition for reconsideration by the responding
5 division, the division shall approve or deny, in whole or in part, the relief requested.
6 Prior to rendering its decision and during the 90 days, the division may attempt to
7 resolve issues with the petitioner through informal discussion and settlement
8 negotiations with the objective of narrowing the issues for an appeals conference or
9 court review, and may concede or settle individual issues based on the facts and the
10 law, including the hazards of litigation. By mutual consent of the division and the
11 petitioner, the 90 days may be extended for good cause, such as to allow further
12 factual investigation or litigation of an issue by that or another taxpayer pending in
13 court.

14 C. If the matter between the division and the petitioner is not resolved within the
15 90-day period, and any extension thereof, the petitioner may consider the petition for
16 reconsideration denied. The petitioner may not consider the petition for
17 reconsideration denied after either the reconsidered decision has been received by the
18 petitioner or the expiration of 9 years following the filing of the petition for
19 reconsideration, whichever occurs first. A petition for reconsideration considered
20 denied pursuant to this paragraph constitutes final agency action. A petitioner elects
21 to consider the petition for reconsideration denied by:

22 (1) For a small claim request, filing a petition for review in Superior Court. For
23 purposes of this subparagraph, "small claim request" has the same meaning as in
24 paragraph E; or

25 (2) For all other requests:

26 (a) Filing a statement of appeal with the board; or

27 (b) Filing a petition for review in Superior Court.

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

30 E. A reconsidered decision rendered on any request other than a small claim request
31 constitutes the assessor's final determination, subject to review by either the board or
32 the Superior Court. A reconsidered decision rendered on a small claim request
33 constitutes the assessor's final determination and final agency action and is subject to
34 review by the Superior Court in accordance with the Maine Administrative Procedure
35 Act. For purposes of this paragraph, "small claim request" means a petition for
36 reconsideration when:

37 (1) The amount of tax or refund request in controversy, exclusive of interest or
38 penalty, is less than \$5,000;

39 (2) The only issue raised by the petition for reconsideration is waiver of interest
40 or penalties; or

41 (3) The only issue raised by the petition for reconsideration is whether the
42 request for refund or other requested relief is barred by the statute of limitations.

1 F. A person who wishes to appeal a reconsidered decision under this section:

2 (1) To the board must file a written statement of appeal with the board within 60
3 days after receipt of the reconsidered decision; or

4 (2) Directly to the Superior Court must file a petition for review in the Superior
5 Court within 60 days after receipt of the reconsidered decision.

6 If a person does not file a request for review with the board or the Superior Court
7 within the time period specified in this paragraph, the reconsidered decision becomes
8 final and no further review is available.

9 G. Upon receipt of a statement of appeal or petition for review filed by a person
10 pursuant to paragraph F, the board or Superior Court shall conduct a de novo hearing
11 and make a de novo determination of the merits of the case. The board or Superior
12 Court shall enter those orders and decrees as the case may require. The burden of
13 proof is on the person, except as otherwise provided by law.

14 **Sec. 4. 36 MRSA §151-B**, as enacted by PL 2011, c. 439, §3 and affected by §12,
15 is repealed.

16 **Sec. 5. 36 MRSA §151-C, sub-§1**, as enacted by PL 2011, c. 439, §4 and
17 affected by §12, is amended to read:

18 **1. Appointment.** The Commissioner of Administrative and Financial Services shall
19 hire the taxpayer advocate as an employee of the bureau. The taxpayer advocate need not
20 be an attorney.

21 **Sec. 6. 36 MRSA §151-D** is enacted to read:

22 **§151-D. Maine Board of Tax Appeals**

23 **1. Board established.** The Maine Board of Tax Appeals, established in Title 5,
24 section 12004-B, subsection 10, is established as an independent board within the
25 Department of Administrative and Financial Services and is not subject to the supervision
26 or control of the bureau. The purpose of the board is to provide taxpayers with a fair
27 system of resolving controversies with the bureau and to ensure due process.

28 **2. Members; appointment.** The board consists of 3 members appointed by the
29 Governor, subject to review by the joint standing committee of the Legislature having
30 jurisdiction over taxation matters and confirmation by the Legislature. No more than 2
31 members of the board may be members of the same political party. The Governor shall
32 designate one board member to serve as chair. The Governor may remove any member
33 of the board for cause.

34 **3. Qualifications.** The members of the board must be residents of this State and
35 must be selected on the basis of their knowledge of and experience in taxation. A
36 member of the board may not hold any elective office or any public office involving
37 assessment of taxes or administration of any of the tax laws of this State. At least one
38 member must be an attorney. No more than 2 members may be attorneys.

1 **4. Terms.** Members of the board are appointed for terms of 3 years. A member may
2 not serve more than 2 consecutive terms, plus any initial term of less than 3 years. A
3 vacancy must be filled by the Governor for the unexpired term subject to review by the
4 joint standing committee of the Legislature having jurisdiction over taxation matters and
5 confirmation by the Legislature during the next legislative session.

6 **5. Quorum.** Two members of the board constitute a quorum. A vacancy in the
7 board does not impair the power of the remaining members to exercise all the powers of
8 the board.

9 **6. Compensation.** A member of the board is entitled to a per diem of \$100. Board
10 members receive reimbursement for their actual, necessary cash expenses while on
11 official business of the board.

12 **7. Powers and duties.** The board has all powers as are necessary to carry out its
13 functions. The board may be represented by legal counsel. The board may delegate any
14 duties as necessary.

15 **8. Appeals office.** The board shall establish and maintain an office, referred to in
16 this section as "the appeals office," in the City of Augusta to assist the board in carrying
17 out the purposes of this section. The board may meet and conduct business at any place
18 within the State.

19 **9. Chief Appeals Officer; appeals office.** The Commissioner of Administrative and
20 Financial Services shall appoint the Chief Appeals Officer to assist the board and manage
21 the appeals office. The Chief Appeals Officer must be a citizen of the United States and
22 have substantial knowledge of tax law. The salary of the Chief Appeals Officer is within
23 salary range 47. The Chief Appeals Officer shall:

24 **A.** Subject to policies and procedures established by the board, manage the work of
25 the appeals office and hire personnel, including subordinate appeals officers and
26 other professional, technical and support personnel;

27 **B.** Assist the board in the development and implementation of rules, policies and
28 procedures to carry out the provisions of this section and section 151 and comply
29 with all applicable laws;

30 **C.** Prepare a proposed biennial budget for the board, including supplemental budget
31 requests as necessary, for submission to and approval by the Commissioner of
32 Administrative and Financial Services;

33 **D.** Attend all board meetings and maintain proper records of all transactions of the
34 board; and

35 **E.** Perform other duties as the board and the Commissioner of Administrative and
36 Financial Services may assign.

37 **10. Appeals procedures.** Appeals of tax matters arising under this chapter are
38 conducted in accordance with this subsection.

39 **A.** If requested by a petitioner in a statement of appeal, the appeals office shall hold
40 an appeals conference to receive additional information and to hear arguments

1 regarding the protested assessment or determination. The board shall set a rate of no
2 more than \$150 as a processing fee for each petition that proceeds to an appeals
3 conference. These fees must be credited to a special revenue account to be used to
4 defray expenses in carrying out this section. Any balance of these fees in the special
5 revenue account does not lapse but is carried forward as a continuing account to be
6 expended for the same purposes in the following years.

7 B. The appeals office shall provide a petitioner with at least 10 working days' notice
8 of the date, time and place of an appeals conference. The appeals conference may be
9 held with fewer than 10 working days' notice if a mutually convenient date, time and
10 place can be arranged.

11 C. An appeals officer shall preside over an appeals conference. The appeals officer
12 has the authority to administer oaths, take testimony, hold hearings, summon
13 witnesses and subpoena records, files and documents the appeals officer considers
14 necessary for carrying out the responsibilities of the board.

15 D. If a petitioner does not include a request for an appeals conference in the
16 statement of appeal, the appeals officer shall determine the matter based on written
17 submissions by the petitioner and the division within the bureau making the original
18 determination.

19 E. Both a petitioner and the assessor may submit to the appeals officer, whether or
20 not an appeals conference has been requested, written testimony in the form of an
21 affidavit, documentary evidence and written legal argument and written factual
22 argument. In addition, if an appeals conference is held, both the petitioner and the
23 assessor may present oral testimony and oral legal argument. The appeals officer
24 need not observe the rules of evidence observed by courts, but shall observe the rules
25 of privilege recognized by law. If the appeals officer considers it appropriate, the
26 appeals officer may encourage the petitioner and the assessor to resolve disputed
27 issues through settlement or stipulation. The appeals officer may limit the issues to
28 be heard or vary any procedure adopted for the conduct of the appeals conference if
29 the parties agree to that limitation.

30 F. Except when otherwise provided by law, a petitioner has the burden of proving,
31 by a preponderance of the evidence, that the assessor has erred in applying or
32 interpreting the relevant law.

33 G. The appeals officer shall exercise independent judgment. The appeals officer
34 may not have any ex parte communications with any party, including the petitioner,
35 the assessor or any other employee of the Department of Administrative and
36 Financial Services except those employees in the appeals office; however, the appeals
37 officer may have ex parte communication limited to questions that involve ministerial
38 or administrative matters that do not address the substance of the issues or position
39 taken by the petitioner or the assessor.

40 H. The appeals officer shall prepare a recommended final decision on the appeal for
41 consideration by the board based upon the evidence and argument presented to the
42 appeals officer by parties to the proceeding. The decision must be in written form
43 and must state findings of fact and conclusions of law. The appeals officer shall
44 deliver copies of the recommended final decision to the board.

1 I. The board shall consider the recommended final decision on a timely basis. After
2 considering the recommended final decision, the board may:

3 (1) Adopt the recommended final decision as delivered by the appeals officer;

4 (2) Modify the recommended final decision;

5 (3) Send the recommended final decision back to the same appeals officer, if
6 possible, for the taking of further evidence, for additional consideration of issues,
7 for reconsideration of the application of law or rules or for such other
8 proceedings or considerations as the board may specify; or

9 (4) Reject the recommended final decision in whole or in part and decide the
10 appeal itself on the basis of the existing record.

11 A decision adopted under this paragraph is the final administrative decision on the
12 appeal and is subject to review by the Superior Court in accordance with the Maine
13 Administrative Procedure Act.

14 Subject to any applicable requirements of the Maine Administrative Procedure Act, the
15 board shall adopt rules to accomplish the purposes of this section. Those rules may
16 define terms, prescribe forms and make suitable order of procedure to ensure the speedy,
17 efficient, just and inexpensive disposition of all proceedings under this section. Rules
18 adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter
19 375, subchapter 2-A.

20 Beginning in 2014 and annually thereafter, the board shall prepare and submit a report by
21 January 1st on the activities of the board to the Governor, the assessor and the joint
22 standing committee of the Legislature having jurisdiction over taxation matters.

23 **Sec. 7. 36 MRSA §191, sub-§2, ¶C,** as enacted by PL 1977, c. 668, §2, is
24 amended to read:

25 C. The inspection by the Attorney General of information filed by any taxpayer who
26 has requested review of any tax under this Title or against whom an action or
27 proceeding for collection of tax has been instituted; or the production in court or to
28 the board on behalf of the State Tax Assessor or any other party to an action or
29 proceeding under this Title of so much and no more of the information as is pertinent
30 to the action or proceeding;

31 **Sec. 8. 36 MRSA §191, sub-§2, ¶UU,** as reallocated by RR 2011, c. 1, §52, is
32 amended to read:

33 UU. The production in court on behalf of the assessor or any other party to an action
34 or proceeding under this Title, or the production pursuant to a discovery request
35 under the Maine Rules of Civil Procedure or a request under the freedom of access
36 laws, of any reconsideration decision or ~~other document setting forth or discussing~~
37 ~~the assessor's practice, interpretation of law or application of the law to particular~~
38 ~~facts~~ advisory ruling issued on or after July 1, 2012, in redacted format so as not to
39 reveal information from which the taxpayer may be identified, except that federal
40 returns and federal return information provided to the State by the Internal Revenue
41 Service may not be disclosed except as permitted by federal law. A person
42 requesting the production of any such document shall pay, at the time the request is

1 made, all direct and indirect costs associated with the redacting of information from
2 which the taxpayer or other interested party may be identified, plus an additional fee
3 of \$100 per request; and

4 **Sec. 9. 36 MRSA §191, sub-§2, ¶VV**, as reallocated by RR 2011, c. 1, §53, is
5 repealed.

6 **Sec. 10. 36 MRSA §191, sub-§2, ¶WW** is enacted to read:

7 WW. The disclosure of information by the assessor to the board and the subsequent
8 inspection and disclosure of that information by the board, except that such disclosure
9 is limited to information that is pertinent to an appeal or other action or proceeding
10 before the board.

11 **Sec. 11. PL 2011, c. 439, §9** is repealed.

12 **Sec. 12. PL 2011, c. 439, §11** is amended to read:

13 **Sec. 11. Cost administration.** The Commissioner of Administrative and
14 Financial Services, the State Tax Assessor and the ~~Chief Appeals Officer~~ Maine Board of
15 Tax Appeals established pursuant to the Maine Revised Statutes, Title 36 5, section ~~451-~~
16 ~~B 12004-B~~, subsection 2 10 shall manage the implementation of this Act to ensure that
17 this Act is implemented within existing resources. The following principles govern costs
18 associated with this Act.

19 1. The ~~Independent Appeals Office~~ Maine Board of Tax Appeals, the Chief Appeals
20 Officer appointed pursuant to Title 36, section 151-D, subsection 9 and the appeals office
21 established in Title 36, section 151-B 151-D may have no greater cost than the appellate
22 division of the Department of Administrative and Financial Services, Bureau of Revenue
23 Services prior to enactment of this Act ~~and all positions within the Independent Appeals~~
24 ~~Office must have equivalent salary ranges as the positions in the appellate division prior~~
25 ~~to enactment of this Act.~~ The Commissioner of Administrative and Financial Services
26 shall take any steps necessary to ensure that the total costs associated with the
27 ~~Independent Appeals Office~~ appeals office are no greater than the costs that would have
28 been associated with the appellate division prior to enactment of this Act.

29 2. The funding associated with the current taxpayer advocate of the Department of
30 Administrative and Financial Services, Bureau of Revenue Services must be used to fund
31 the new taxpayer advocate hired by the Commissioner of Administrative and Financial
32 Services and the new taxpayer advocate must have the same salary range as the current
33 taxpayer advocate. The commissioner shall take any steps necessary to ensure that the
34 costs associated with the new taxpayer advocate do not exceed the costs associated with
35 the current taxpayer advocate prior to enactment of this Act.

36 3. ~~No additional positions within the Department of the Attorney General or the~~
37 ~~Department of Administrative and Financial Services, Bureau of Revenue Services may~~
38 ~~be created as a result of this Act.~~

39 **Sec. 13. PL 2011, c. 439, §12** is amended to read:

1 **Sec. 12. Effective date.** This Act takes effect July 1, 2012, ~~except that the~~
2 ~~Commissioner of Administrative and Financial Services is authorized to hire the Chief~~
3 ~~Appeals Officer pursuant to the Maine Revised Statutes, Title 36, section 151-B and the~~
4 ~~taxpayer advocate pursuant to Title 36, section 151-C prior to July 1, 2012 as long as~~
5 ~~those appointments do not take effect until July 1, 2012.~~

6 **Sec. 14. Creation of Maine Board of Tax Appeals; elimination of**
7 **appellate division; transition provisions.** The following provisions govern the
8 elimination of the appellate division within the Department of Administrative and
9 Financial Services, Bureau of Revenue Services and the creation of and the transfer of
10 appeals cases to the Department of Administrative and Financial Services, Maine Board
11 of Tax Appeals, established in the Maine Revised Statutes, Title 5, section 12004-B,
12 subsection 10.

13 1. The Maine Board of Tax Appeals is established on July 1, 2012.

14 2. The Commissioner of Administrative and Financial Services shall appoint the
15 Chief Appeals Officer under the Maine Revised Statutes, Title 36, section 151-D no later
16 than November 1, 2012. The commissioner shall set the number of appeals officers and
17 any other employees and rate of compensation in accordance with Public Law 2011,
18 chapter 439, section 11 and direct the Chief Appeals Officer to fill those positions no
19 later than January 1, 2013.

20 3. The appellate division is eliminated on January 1, 2013, and all open cases of the
21 appellate division must be transferred to the Maine Board of Tax Appeals. The Maine
22 Board of Tax Appeals, the Bureau of Revenue Services and the Commissioner of
23 Administrative and Financial Services shall develop a process to provide for the transition
24 of cases in process by the appellate division on the date of its elimination.

25 4. All Other funds and Personal Services funds from the elimination of positions in
26 the appellate division must be transferred to the Maine Board of Tax Appeals to carry out
27 the provisions of this Act.

28 5. To the extent not inconsistent with the provisions of the Maine Revised Statutes,
29 Title 36, section 151-D, all existing rules, regulations and procedures in effect, in
30 operation or adopted in or by the appellate division are hereby declared in effect and
31 continue in effect until rescinded, revised or amended by the Maine Board of Tax
32 Appeals.

33 6. To the extent not inconsistent with the provisions of the Maine Revised Statutes,
34 Title 36, section 151-D, all existing contracts, agreements and compacts currently in
35 effect in the appellate division continue in effect.

36 7. All records, property and equipment previously belonging to or allocated for the
37 use of the appellate division become the property of the Maine Board of Tax Appeals.

38 8. All existing forms, licenses, letterheads and similar items bearing the name of or
39 referring to the appellate division may be used by the Maine Board of Tax Appeals until
40 existing supplies of those items are exhausted.

