

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)



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
MAINE REVENUE SERVICES
P.O. BOX 1060
AUGUSTA, MAINE
04332-1060

ADMINISTRATIVE & FINANCIAL SERVICES

H. SAWIN MILLETT, JR.
COMMISSIONER

BRUCE R. LIVINGSTON
TAXPAYER ADVOCATE

July 25, 2013

Governor Paul R. LePage
1 State House Station
Augusta, ME 04333-0001

Senator Anne M. Haskell
Representative Adam A. Goode
Joint Standing Committee on Taxation
100 State House Station
Augusta, ME 04333-0100

State Tax Assessor Jerome D. Gerard
Maine Revenue Services
PO Box 1060
Augusta, ME 04332-1060

Dear Governor LePage, Co-Chairs Haskell and Goode and Assessor Gerard:

Pursuant to Public Law 2011, Chapter 439, Section 151-C (3), I have enclosed herewith the annual report regarding the activities of the Taxpayer Advocate. Please feel free to contact me if you have any questions about this report.

Respectfully submitted,

Bruce R. Livingston
Taxpayer Advocate
Maine Revenue Services

cc: Members of the Joint Standing Committee on Taxation
Commissioner H. Sawin Millett, Jr., DAFS



Annual Report of the Taxpayer Advocate

**A Report Prepared for the Governor, the Assessor and
the Joint Standing Committee on Taxation
Pursuant to PL 2011, c. 439**

**Department of Administrative and Financial Services
Maine Revenue Services**

A handwritten signature in cursive script, reading "Bruce R. Livingston".

**Bruce R. Livingston
Taxpayer Advocate
Maine Revenue Services**

July 25, 2013

This report is due annually by August 1st as provided in PL 2011, c. 439, Section 4. 36 MRSA §151-C is enacted to read: (3) Annual report. "Beginning in 2012, the taxpayer advocate shall prepare and submit by August 1st an annual report of activities of the taxpayer advocate to the Governor, the assessor and the joint standing committee of the Legislature having jurisdiction over taxation matters."

In my first annual report on July 30, 2012, I mentioned my friend, Nina Olson, the National Taxpayer Advocate, who had submitted eleven annual reports. When Ms. Olson presented her tenth Annual Report to Congress in December 2010, she stated that since it was her tenth report it seemed a "natural time for reflection" and queried, "What has the report accomplished these last ten years?" She stated that "perhaps the report's greatest contribution is to make transparent the operation of federal tax administration in the United States."

Last year I queried, what will the Maine Taxpayer Advocate report have accomplished ten years from now? Now, as then, I would hope that it will continue to reflect that utilizing a rational common sense approach to Maine tax law, law seen by many taxpayers as a hopeless bureaucratic jungle, has been beneficial to both the State and its taxpayers.

Since my 2012 report, I have spoken at the annual Maine Tax Forum presented by Maine Revenue Services on November 8, 2013. The panel was entitled "New Office of Board of Tax Appeals and Taxpayer Advocate". I think the presentation was informative and was well-received by the audience. I received several favorable comments about my part of the presentation.

On January 14, 2013, I made a brief presentation along with other Maine Revenue Services staff members to the Joint Standing Committee on Taxation. On May 29, 2013, I participated in an IRS Tax Practitioner Liaison Meeting for leaders of Maine Tax Practitioner Organizations.

Rather than simply refer to my 2012 Annual Report, I think it would be helpful to include some of the items from that report herein so the reader will have the information in front of them.

Background of the Position

The Taxpayer Advocate position was created in 1995. The purpose/mission/role of the Taxpayer Advocate (Advocate) has been to assist taxpayers who have questions about Maine tax law; concerns about their tax situation as it relates to some aspect of Maine tax law; are confused about their tax situation; or disagree with some action by Maine Revenue Services (MRS), usually an assessment of tax or collection of an amount due.

From 1995 to June 30, 2012, the Advocate had been employed by MRS and had reported directly to the State Tax Assessor or Legal Counsel. This allowed the Advocate to function as independently as possible from MRS operating divisions.

Legislative changes by the One Hundred and Twenty-Fifth Legislature (PL 2011, c. 694) resulted in the following provision in 36 MRS § 151-C, sub-§1 which became effective July 1, 2012.

1. **Appointment.** The Commissioner of Administrative and Financial Services shall hire the taxpayer advocate as an employee of the bureau. The taxpayer advocate need not be an attorney. Chapter 694 amended PL 2011, c. 439 by adding “as an employee of the bureau.”

The following is from PL 2011, c. 439, also effective July 1, 2012.

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

- A. Assist taxpayers in resolving problems with the bureau;
- B. Identify areas in which taxpayers have problems in dealings with the bureau;
- C. Propose changes in the administrative practices of the bureau to mitigate problems identified under paragraph B;
- D. Identify legislative changes that may be appropriate to mitigate problems identified under paragraph B.

3. **Annual Report.** Beginning in 2012, the taxpayer advocate shall prepare and submit by August 1st an annual report of activities of the taxpayer advocate to the Governor, the assessor and the joint standing committee of the Legislature having jurisdiction over taxation matters.

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

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

Historically, the Advocate has worked with taxpayers concerning all taxes and programs administered by MRS, including income tax, withholding tax, sales and use tax, property tax, tax and rent (Circuit Breaker) and the Homestead Exemption. Note: the Maine Residents Property Tax and Rent Refund “Circuitbreaker” Program was terminated as part of the recently enacted State budget and has been replaced by a refundable Property Tax Fairness Credit.

The Advocate has worked with MRS staff in identifying areas where taxpayers have had problems in dealings with MRS. From time to time, changes in administrative practices are recommended, most often in regard to content or format of various documents and

correspondence. In order to serve taxpayers, it is essential that the Advocate keep up to date on proposed, pending and enacted Maine tax law and with any procedural changes made by MRS.

D. Identify legislative changes that may be appropriate to mitigate problems identified under paragraph B. (B. Identify areas in which taxpayers have problems in dealings with the bureau).

In addition to the Commissioner of DAFS hiring the Taxpayer Advocate, another provision of PL 2011, c. 439, duties and responsibilities of the Advocate, calls for the Advocate to identify legislative changes that may be appropriate to mitigate problems in areas in which taxpayers have problems in dealings with MRS. Two of the three items I proposed in my July 30, 2012 report were incorporated into LD 988, An Act To Amend the Tax Laws. Part A addressed the issuance and renewal of resale certificates and Part C-9 addressed the sales tax against certain casual sales.

The other area I addressed concerned the interest rate charged by the State in tax matters. Title 36 MRSA § 186, Interest, provides that the rate of interest equals the highest prime rate as published in the Wall Street Journal, rounded up to the next whole percent plus 3 percentage points. At present, the interest rate is 7%. I commented that with many interest bearing accounts in banks or credit unions yielding interest at the rate of ½ %, although I did not know what the revenue impact would be on such a measure, might the State consider lowering the interest rate on delinquent tax obligations by several percentage points?

Items of concern and possible legislative changes for this report involve the taxation (sales tax) of adaptive equipment to make a vehicle handicapped accessible and the taxation (income tax) of pensions, primarily pensions earned in another state by someone who then becomes a Maine resident and a Maine taxpayer.

Adaptive Equipment

I was contacted during the past year by a friend of a person who is a quadriplegic as a result of an accident several years ago. The friend was concerned about the sales tax the person had to pay when they purchased and registered a van that had been previously modified and made handicap accessible by someone else before the person purchased it. The present Session of the Legislature has addressed the situation with LD 1370, An Act To Exempt from Sales Tax the Sales of Adaptive Equipment To Make a Vehicle Handicapped Accessible. LD 1370 was Passed To Be Enacted on June 27, 2013. At present, LD 1370 is held over.

If implemented, LD 1370 would enact 36 MRSA §1760, sub-§95. Sales of certain adaptive equipment, to read that "sales to a person with a disability or to a family member of a person with a disability of adaptive equipment for installation in or on a motor vehicle to make that vehicle operable or accessible by a person with a disability."

The LD 1370 exemption extends to only that equipment sold directly to a disabled person or a family member of that person. It does not address the situation where the adaptive equipment was installed previously on a vehicle for someone else. Thus, LD 1370 would not apply to the disabled Maine taxpayer who purchased an already adapted vehicle from someone out of state.

If enacted, might the provisions of LD 1370 be tweaked so that when a disabled person purchases an already modified vehicle, they would pay Maine sales tax on only the price of the vehicle and not of the adaptive equipment. This would involve some record keeping and perhaps research on the part of the disabled person to ascertain the price of the vehicle and of the adaptive equipment, but the effort would likely be worthwhile if they were able to be exempt from paying sales tax on the adaptive equipment. At the present Maine sales tax of 5%, the savings would be \$1,000 on a \$20,000 conversion.

Pensions

Another area of concern involves the Maine taxation of retirement income from other states. Taxpayers have moved to Maine and have become Maine residents and taxpayers. They receive a pension earned in another state, where, as with State of Maine employees and educators, a portion of it has already been taxed. Governor LePage has been contacted by several taxpayers concerning the Maine taxation of their pensions earned and taxed in another state, but received now as Maine residents.

The issue was brought to my attention from several directions. The first one I received resulted from an email sent (so far as I was able to ascertain) to all legislative members of one Maine political party in one branch of the Maine Legislature. The email was entitled "double taxation on Mainers receiving pension from Massachusetts." That emailer also attached the same April 2013 letter from a Massachusetts retirees organization that was sent to Senator Anne Haskell. They were looking for assistance in perhaps drafting legislation to address the fact that some pensioners who have paid state income tax on their earnings in the state where they earned it, are now Maine residents and now have to pay Maine income tax on the pension they receive.

I also received an inquiry from the Governor's Office through DAFS. A Massachusetts (MA) resident who wants to move to Maine was looking for assistance in obtaining "reciprocity" between Maine and MA income tax. It appeared this was the same issue. I called the person and left a message on their answering machine, but they did not call me back.

We also had an inquiry from another State Senator that received material on the same issue.

The April 2013 letter from the Massachusetts retirees organization was sent to Maine taxpayers identified as those who were retired from a Massachusetts school and living in the State of Maine, or were the survivor of one.

In responding to the various inquiries, I explain that the situation would be the same for a Maine taxpayer with a Maine State pension who moves to MA, they would have paid Maine income tax on a portion of their retirement contribution while earning it in Maine and would pay tax to MA on the Maine pension they receive if they become a MA resident. In other words, the same taxable income situation in MA that a MA resident moving to Maine would have here.

When a response is requested or if I speak with a taxpayer, I mention that there is a \$6,000 pension deduction (possibly subject to offset for Social Security benefits received) and that the deduction will increase to \$10,000 beginning with tax year 2014.

I don't profess to know how much a MA resident pays to MA when the money is earned. Reviewing the MA Department of Revenue website I found some information about the taxation of pensions. Under FAQ, I found "which pensions are exempt from MA taxation"? The answer is "income from a contributory public employee retirement plan of another state received by a MA resident may be deducted from MA adjusted gross income if the other state grants reciprocal treatment to retirees from MA living there." I don't know how many, if any, states offer reciprocity to former MA residents with this situation.

The FAQ language seems to be the gist of proposed language provided by the Massachusetts retirees organization in its April 2013 communication to MA retirees who are now Maine residents.

If someone were to explore the possibility of some sort of reciprocity legislation, what the revenue impact would be if such a measure were passed would be for someone such as Michael J. Allen, Associate Commissioner For Tax Policy (DAFS) to research.

With an apparent larger number of MA residents moving to Maine or thinking of doing so, might this be the sort of legislation that would encourage residents from other States to move to Maine?

Taxpayer problems or concerns continue to reach the Advocate from many different sources - the Governor's constituent services staff; taxpayers or their representatives; Legislators or members of Legislative staff; staff from Maine's Congressional delegation; MRS staff - compliance (collection), income tax, sales and use tax and property tax; the Office of the Federal Taxpayer Advocate; and from a position that was new on October 2011, the Small Business Advocate for the Office of the Secretary of State.

When reviewing a case, the Advocate is bound by the same provisions of Maine tax law, including taxpayer confidentiality laws, as any other MRS employee. The role of the Advocate is not intended to be a substitute for or an alternative to the MRS collection process and is not a substitute for any appeals process.

From time to time, a taxpayer with a tax problem may ask a tax examiner if there is someone else available to talk to about the case. Often those types of inquiries are referred to the Advocate. It is not possible for the Advocate to take over the case management of every matter that is referred. However, the Advocate reviews the tax issues involved, discusses the case with staff from the applicable tax division if need be and makes appropriate suggestions and recommendations as to how the case might be resolved. If appropriate, the advocate advises taxpayers about payment plans and offers in compromise.

Much of the Advocate's work is done on the telephone. The majority of inquiries that the Advocate receives, reviews and responds to come from Governor LePage's Office of Constituent Services received through DAFS or from taxpayers themselves, often upon a referral from MRS' compliance division.

Most everyday, I receive a smattering of telephone calls, emails and letters on most anything imaginable, many having to do with Maine taxes and Maine Revenue Services, but some having nothing at all to do with the Advocate position or with MRS. I seem to be a knowledgeable source of information and answers. I review and answer whatever inquiries I can and forward the others to the appropriate entities such as the Federal Taxpayer Advocate, an MRS division or another State agency.

The Advocate maintains a notebook to keep a record of voicemail that is received. This has proven to work a lot better than pink call slips especially since some recorded telephone messages can run to a minute or two. Plus, it provides a useful record of calls made to the Advocate.

Since 1995, one of the duties and responsibilities of the Advocate has been responding to correspondence regarding tax issues that have been received by the Governor. That process continued through the administrations of Governors King and Baldacci and continues today with Governor LePage. MRS Division Directors address issues relevant to their Divisions, but the Advocate has responded to much of the correspondence. Effective July 1, 2012, the Advocate continued to respond to inquiries regarding specific tax issues, but not to questions regarding administration policy. The Office of Tax Policy within MRS responds to tax policy correspondence.

Since January 2011; the Advocate has sent some two hundred and fifty responses to correspondence received by Governor LePage and has sent hundreds of letters or emails to taxpayers or their representatives on cases and issues they have presented to the Advocate.

Every so often the Advocate is contacted by a taxpayer reporting that their credit rating has been adversely affected by a Maine tax lien. Upon review, the Advocate has found that in most instances, the lien has been discharged, but the fact that there was a lien remains on the taxpayer's credit report. Review has usually indicated that the taxpayer did not pay as much attention to the collection process and to the notices they received as they should have. In most cases, the taxpayer subsequently provided information, the

matter was reviewed and resolved and the lien was released. Sometimes, the result of review indicates the taxpayer would have been due a refund (usually barred by the statute of limitations) or did not owe any Maine tax.

Recognizing the taxpayer's dilemma, a few years ago the Advocate initiated a program to help such taxpayers. The Advocate issues a statement over the Advocate's signature indicating that the tax lien provides an inaccurate representation of the taxpayer's Maine tax obligation and recommending that any negative effect caused by the filing of the tax lien be removed from the taxpayer's credit history and credit reports. Since 2008, the Advocate has issued twenty-nine such statements. It seems to have been successful since several taxpayers have contacted the Advocate to advise that the statement helped to resolve their credit problems.

Examples of situations handled by the Taxpayer Advocate since the July 30, 2012 annual report.

On a weekly, if not daily basis, we receive inquiries from Governor LePage's Office of Constituent Services and Legislative aides regarding constituents who contact the Governor or a legislator about some tax problem they are having. These are promptly addressed either by myself, or by someone else at MRS if the question/issue pertains to something better answered by Sales Tax, Compliance or Property Tax.

We also get what I would classify as general calls where someone has a federal, not State, tax question, thinks I'm the federal Taxpayer Advocate or is looking for information or department that has nothing to do with MRS. I'm usually able to point these folks in the right direction if I don't know the answer.

In the fall of 2012, MRS got many calls about the letters and material that were sent to some 127,000 taxpayers regarding the 2012 Maine Use Tax Compliance Program that was effective from October 1, 2012 through November 30, 2012. I understand that the taxpayers who received this material were those with rather high incomes who paid little or no sales/use tax when they filed their Maine income tax returns.

The Advocate received several calls as well, either directly from taxpayers or from legislative aides. Mostly, people just wanted to know the purpose of the program, how it worked and what to do if they thought they owed sales/use tax. However, in some of the situations that I reviewed, although the taxpayer(s) assured me that they had declared and paid sales/use tax when they filed their Maine income tax returns, review of their returns found a \$0 on the sales/use tax line or it was blank.

An inquiry received from a State Representative involved a taxpayer with an ineffective divorce decree that held the now ex-spouse responsible for any joint Maine sales tax liabilities (the taxpayer was assessed as a responsible individual). The taxpayer requested reconsideration, but the assessment was upheld. The taxpayer appealed to Superior Court, but withdrew the appeal because attorney fees were going to be more than the

taxpayer could afford. Unfortunately, it is not widely understood that a divorce decree does not absolve one spouse from a joint Maine tax obligation incurred with the now ex-spouse. Even though the divorce decree orders one spouse to pay the tax obligation, the court decree does not excuse the other spouse of their responsibility to the State of Maine on a joint tax debt (or to the IRS). Since MRS was not a party to the divorce, the terms of the divorce decree do not apply to MRS. In this case, the taxpayer relied on the divorce decree which did them no good. If the taxpayer ends up paying Maine tax, the remedy is to return to Court to have the ex-spouse held in contempt. The taxpayer was offered a counteroffer (one-half the amount due) to their offer in compromise of \$0, but the taxpayer doesn't think they should have to pay that either. Based on my review, I thought we might be able to do something very positive for the taxpayer.

Continuation. After a long and extensive review, and even with a reconsideration decision upholding responsibility, the Advocate determined that the taxpayer had no involvement whatsoever with the business and recommended that MRS cancel the assessment.

The Advocate was contacted by a CPA for a client whose rather low offer in compromise had been rejected by MRS. Although lengthy payment plans are the exception rather than the rule, we were able to offer a compromise stretching over several years (with additional interest) that the taxpayer agreed to.

The Advocate received an inquiry from the Governor's office regarding a call to them from a taxpayer wondering when they were going to receive their refund from the 2 ½ % withheld when the non-residents sold their Maine real estate. Review found their income tax return to be in suspense because it was incorrect. With the help of income tax staff, the return was reviewed and the refund sent on its way to the taxpayer.

A State Representative called about a constituent issue regarding the denial of a tax and rent (Circuit Breaker) application. The inquiry was from a son for his elderly parent. Review indicated that although the son had filled out his parent's application incorrectly, someone (apparently not the son) had called about the denial notice, the information had been corrected and the taxpayer had been sent their refund several weeks earlier. The Representative was going to call the son.

We guided a recently divorced taxpayer with some income tax filing problems/mistakes to the Compliance Division where they were able to work through the problems with the taxpayer and save them several thousand dollars.

I found that a recent inquiry from the Governor's Office concerning a tax and rent refund denial had been reviewed earlier by income tax staff. Apparently, the taxpayer did not like the answer they received (which was correct) and was looking for a different answer. Review indicated the taxpayer had moved, their rent was lower than before, and they did not meet the program criteria.

The Advocate had several inquiries regarding personal property taxes being assessed by municipalities against out-of-state residents who park their RVs year-round in campgrounds or RV parks. Basically, if the RV is in place on April 1st, it's subject to personal property tax. It appears that some towns have become more attuned to this personal property tax as a source of municipal revenue. We had similar inquiries several years ago when several southern Maine municipalities began assessing personal property tax on year-round campers.

I receive referrals from people reporting possible tax violations, be it income tax or sales tax. I respond, thank the "whistleblower" for the information and advise that the matter will be reviewed/investigated by MRS, but that they will not be informed of the outcome because of the taxpayer confidentiality law.

The Advocate had a couple of instances where a taxpayer called about an assessment of penalty for late filing and payment of the sales tax on the casual rental of a cottage. MRS generally waives penalty for a first time violation if the return is not more than 30 days overdue. Review indicated that to be the case and the penalty was waived in both instances.

I responded to a taxpayer who contacted the Governor's Office expressing concern over their Maine income tax situation. Review indicated their Maine income tax problems arose because they did not have enough Maine income tax withheld from their earnings. Having one taxpayer with far too little withheld from earnings of more than \$45,000 and the other with less than \$100 withheld on earnings of more than \$15,000 is apt to cause a tax problem. In addition, the taxpayers had defaulted on several payment plans. I advised that they might want to think about making estimated tax payments to avoid future income tax problems.

A taxpayer contacted me about a tax lien that was still on her credit report as "undischarged". In matters such as this, it is often my experience that the taxpayers confuse "undischarged" with the fact that a lien, even though discharged, remains on a credit report for many years. In this case, I advised the taxpayer that she had participated in the 2003 Amnesty Program, paid the amount due under that program in August 2003 and the tax lien had been soon released.

A serviceman who had not paid enough attention to notices he had received about Maine income tax contacted me after a tax lien was placed. Review indicated that although he was stationed in Maine, he was a nonresident for income tax purposes. The assessment was cancelled and the lien was released as having been "filed in error".

A taxpayer called wondering what to do and what agreement might be reached regarding his unfiled 2008 through 2010 Maine income tax returns. I advised he should file his returns and then, based on what his tax liability might be, go from there.

A situation involved a major sales tax problem with the owner of a successful local business. The taxpayer had written to the Governor and provided copies to Commissioner Millett and the State Tax Assessor, among others. The main problem was nonpayment of sales tax for several months. The taxpayer acknowledged that the sales tax that had been collected was used for other purposes. The taxpayer had made significant payments on a vigorous payment plan. My review resulted in the removal of a demand for payment penalty from the account and the payment plan continued.

An accountant wrote to Governor LePage about his clients who had no withholding, made no estimated payments and owed several hundred dollars when they filed their Maine income tax return along with a small payment. The accountant represented that the taxpayers were not going to pay anything. I called and asked the wife, since they knew they would have no withholding, why they didn't make any estimated tax payments. She indicated the accountant advised them not to. Given the circumstances, I thought that an offer in compromise with payment of tax, interest and 10% of the penalty was a fair solution for both the State and the taxpayers. They made the payment within a week or so.

A taxpayer contacted the Governor because he was displeased with the interest assessed on his recent return. Review indicated the taxpayer had incorrectly calculated several deductions. I advised the taxpayer why the interest charge was appropriate, he advised he would pay it and did so.

The Advocate spent a lot of time on a case that first reached us from State Representatives. The essence of the situation was that the taxpayer's "trade" of a leased vehicle was not an allowable trade to reduce the amount subject to sales tax on the purchase of another vehicle. The transaction involved was not a "trade-in" because the taxpayer did not own the vehicle that was turned in, it was owned by the lessor. A case like this where the sales tax has been calculated incorrectly comes along every once in a while. It is my experience in speaking with town officials that they do not give legal advice. They calculate the sales tax that is due based on the information on the Use Tax Certificate that is provided by the taxpayer. Given the fact that car sales in Maine far outnumber vehicle leases, unless the taxpayer specifically mentions to the town clerk that there is a leased vehicle involved, the clerk may not ask if the vehicle being "traded" is actually a leased vehicle and thus calculates the sales tax on the "net amount subject to tax" as provided by the taxpayer on line 3 of the Use Tax Certificate. The taxpayer requested reconsideration and the decision upheld the assessment.

I received a call from a very angry taxpayer whose request for a 2008 income tax refund had been denied due to the statute of limitations. The taxpayer's 2008 return was not filed until November 2012, beyond the three year statute of limitations for filing. A reconsideration decision had upheld the denial. I explained to the taxpayer that there was nothing I could do about it.

A taxpayer wrote to me requesting waiver of penalty of a bit more than \$100 for late filing and payment of their sales tax return for their casual rental property. I advised the taxpayer that Maine tax law, Title 36, Section 187-B (7) provides that a penalty shall be waived if "a return that was due other than monthly was filed and paid less than one month late and all of the taxpayer's returns and payments during the preceding 3 years were timely." Review indicated that an earlier return had been filed late, thus incurring interest and penalty. Because of this, the so-called "automatic waiver" was not available for the quarter at issue.

As it does every year, with filing season arriving in the spring with taxpayers filing their annual federal and Maine income tax returns, seeking refunds if applicable, the issue of the offset of federal income tax refunds to Maine arose. The taxpayers who reach the Advocate are usually not happy about the process. If applicable, I point out to taxpayers that a paragraph on the Demand to Pay Notice(s) that has been sent to them contains language that "this notice is also a warning that if payment in full is not postmarked or received **within 60 days** from the date you receive this notice, **federal law authorizes Maine Revenue Services to submit any outstanding state income tax liability to the U.S. Department of the Treasury for offset of any federal (IRS) income tax refund to which you would otherwise be entitled.** Under the Treasury Offset Program, once your debt is submitted, your federal tax refund, up to the amount of your debt, may be paid directly to Maine Revenue Services. Any unpaid liability will then remain eligible for future offsets until paid. If you have a payment agreement with Maine Revenue Services, any amount offset will reduce the liability but will not affect the scheduled date of payment or the payment amount." (**bold is on the notice**)

Similarly, if a liquidated debt is owed to an agency of the State, that agency may certify the debt to the State Tax Assessor. Pursuant to State law, 36 MRSA, § 185, the Assessor will then offset any Maine income tax refund to which the taxpayer is entitled to the certifying agency. Any issues regarding the offset, including a claim of injured spouse, are between the taxpayer and the agency and do not involve MRS.

MRS sends the taxpayer a Disposition of Tax Refund Notice that explains what has happened. The notice contains the following paragraph:

"If you do not agree that you owe the debts against which the tax refund was set-off you have the right to request a hearing. You have 60 days from the receipt of this notice to request a hearing. If you wish to request a hearing, call or write the agency receiving the setoff at the address or telephone number below."

That paragraph is followed by this paragraph in **bold, capitalized type**:

"DO NOT CONTACT MAINE REVENUE SERVICES TO REQUEST A HEARING. IF YOU RECENTLY PAID YOUR DEBT, THE TAX REFUND WILL BE RELEASED TO YOU BY THE AGENCY TO WHICH THE DEBT WAS OWED."

An emailer to Governor LePage inquired about MRS "trolling" for nonfilers after reading an article in a Maine newspaper featuring a Maine resident who was running a business out of their home. The emailer was advised of the Tax Violations Hot Line (624-9600) and that MRS gathers information from many sources including the IRS (income taxes), the US Coast Guard (watercraft), municipalities (property taxes) and certain websites. Motor vehicle sales are audited. When possible tax compliance issues are identified - income tax, sales tax, motor vehicle sales and use tax, watercraft use tax or other taxes, MRS takes whatever steps are appropriate to identify and to collect any taxes that may be due. The matter was referred to those who handle the Hot Line.

Several taxpayers complained about the need for a Personal Financial Statement (PFS) in order to set up a payment plan. I explain that a PFS is a very important document since it provides a lot of taxpayer information for MRS to review in order to arrive at a fair and reasonable payment plan. In my experience, some taxpayers have tried to hide their "toys", things like ATVs, motorcycles and snowmobiles that carry significant monthly payments to the bank or credit union. Often, the taxpayer feels a "need" to pay on those to the detriment of paying on a tax bill.

Several taxpayers have mentioned that they have received telephone calls or mailings from companies offering to help them with their tax difficulties. To me, these contacts are a rather new phenomenon. I advise taxpayers that companies are apparently checking the lien records in the registries of deeds, trying to drum up business. In my experience, I have not seen an instance where a taxpayer did better with assistance from what I term these "800" numbers (from the ads on TV) than the taxpayer could have done on their own by working with MRS.

Review indicated that the reason for the increase in a taxpayer's Maine income tax was due to a significant reduction in their itemized deductions rather than an increase in the State income tax.

Another inquiry involved SPT, service provider tax. I was contacted by a State Representative and then through DAFS from the Governor's Office who had been contacted directly by the office of a US Senator. It came to the Advocate as an issue involving a taxpayer who was concerned about the tax placed by DHHS that they have to pay for their spouse who is a patient/resident in a facility.

I responded that from the limited information provided, it looked like an SPT issue, Title 36, Chapter 358, Sections 2551 and continuing. The tax being 5% (§2552 (1), imposed on private nonmedical institution services (paragraph G) which the matter appeared to be. The seller (provider) can include the 5% tax on a customer's bill so long as the seller shows the tax as a separate line item and identifies it as a service provider tax.

An article in the local media indicated that the Representative may present a bill in the next legislative session to eliminate the tax for the section of provider services aimed at private, non-medical institutions licensed by the State.

As with last year's report, I trust that presenting these situations handled by the Taxpayer Advocate, representing a pretty good cross section of what we have worked on over the past year, is helpful in understanding what I do, why and how I do it.

Summation

The legislation states that this annual report is a "report of activities" of the taxpayer advocate. What is it that I do? I spend much of each day on the telephone or on the computer reviewing and analyzing taxpayer situations. No one ever calls me because they're happy about their tax situation. Having been on the other side of the fence, so to speak, for many years, I sometimes tell taxpayers that I'll try to be the least bureaucratic bureaucrat they've ever had to deal with. I think I accomplish that.

Tax problems and situations encountered by Maine taxpayers are rarely easy to deal with, either from the taxpayer's point of view or that of MRS. In some cases, the taxpayer has an unrealistic expectation that contacting the Advocate will result in the elimination of tax or interest or penalties or maybe all three. I rarely see the easy cases, I get the tough ones. And, as the Governor's Office of Constituent Services staff and Legislative Aides can attest, I am often Paul Harvey with "*The Rest of the Story*".

I sometimes tell taxpayers that I do not have a magic wand. I review each, often unique, set of facts to see if there is some alternative to how the matter is being handled. Is there a suggestion or recommendation I can make to help resolve the case? I keep in mind that to the taxpayer this may be the most important and stressful event in their lives at the time.

When a taxpayer contacts the Advocate and explains that MRS is levying their wages or bank account, I know that the collection process is a long way down the collection road. If circumstances warrant, the Advocate may advise compliance/collection staff to modify a payroll deduction plan or to refund a portion of the funds levied from a bank account. There are times, however, when there is little, if anything, that the Advocate can suggest other than to encourage the taxpayer to work with the compliance/collection staff to try to resolve the matter in a mutually satisfactory fashion.

Has the Advocate stepped on some compliance/collection toes once in a while? Yes, when the Advocate has reviewed a case and determined that something different should be done because it was the right thing to do and was fair to both the State and the taxpayer under the umbrella of Maine tax law.

Maine Revenue Services' Mission Statement states that to accomplish its mission, MRS will foster voluntary compliance with the tax laws by providing clear, complete, accurate, and timely guidance to taxpayers to help them understand and meet their responsibilities under the law and to maintain the highest standards of integrity, fairness, confidentiality and courtesy in everything MRS does.

The vision statement for MRS is to be the most effective, innovative agency in Maine state government, committed to providing the citizens of Maine with outstanding service and continuously striving to exceed their expectations.

The MRS' statement of values includes public service - every employee of Maine Revenue Services is firmly committed to delivering prompt, courteous, respectful service to every taxpayer, every time. And, integrity - striving to administer the tax laws fairly, consistently, and impartially.

The above statements are what I strive to live up to everyday as Taxpayer Advocate for Maine Revenue Services/DAFS and the State of Maine.