

# MAINE STATE LEGISLATURE

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PAUL R. LEPAGE  
GOVERNOR

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

ADMINISTRATIVE & FINANCIAL SERVICES

RICHARD W. ROSEN  
COMMISSIONER

BRUCE R. LIVINGSTON  
TAXPAYER ADVOCATE

July 30, 2015

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

Senator Earle L. McCormick  
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 McCormick 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,

A handwritten signature in blue ink that reads "Bruce R. Livingston".

Bruce R. Livingston  
Taxpayer Advocate

cc: Members of the Joint Standing Committee on Taxation  
Commissioner Richard W. Rosen, 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 blue ink that reads "Bruce R. Livingston".

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

**July 30, 2015**



This report is due annually by August 1<sup>st</sup> 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 1<sup>st</sup> 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.”

## **Background of the Position**

The Taxpayer Advocate (Advocate) position was created in 1995. The purpose/mission/role of the 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. I have been the Advocate since July 1997.

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.

Rather than refer to my first three annual reports that the reader is unlikely to have in front of them, I think it would be helpful to include herein some of the pertinent items from those reports so the reader will have that information.

**Legislative changes** by the One Hundred and Twenty-Fifth Legislature (PL 2011, c. 694) resulted in the following provision in 36 MRSA § 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; and
- 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 1<sup>st</sup> 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, excise tax, the former tax and rent (Circuitbreaker) program; the present Property Tax Fairness Credit and the Homestead Exemption. The Maine Residents Property Tax and Rent Refund "Circuitbreaker" Program was terminated as part of the 2013 State budget, PL 2013, c. 368, Pt L, §2 and was replaced by the refundable Property Tax Fairness Credit beginning with tax year 2013.

The Advocate works 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 (notices). 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.

The Advocate receives many telephone calls and a lot of communication regarding taxpayers who are experiencing problems with Maine tax situations. Taxpayer problems or concerns reach the Advocate from many different sources - taxpayers themselves, the Governor's Office of Constituent Services, Maine Legislators or their staff, the DAFS Commissioner's staff, staff for Members of Congress, taxpayer representatives, MRS staff (more than likely the Compliance Division) and the Office of the Federal Taxpayer Advocate.

The Advocate reviews tax matters referred to him, discusses the case with staff from the applicable tax division if need be and makes any suggestions or recommendations that he thinks are appropriate. Since the Advocate is an office of one, logistically it is not possible for the Advocate to take over the management of a case. Nonetheless, depending on the complexity of the situation and the facts involved, the Advocate can spend a lot of time involved with some cases. The Advocate is not a step in any appeals process.

When working with the Compliance Division trying to resolve a tax situation, usually the collection of a tax debt that is legally due, a taxpayer may ask, "Who else can I talk to about this?" Often, the Advocate is the "who else". I sometimes tell people that no one

ever calls me because they're happy about their tax situation. I believe I understand the dynamics I deal with on a daily basis and trust I will always remember that to the taxpayer, the situation they are presently dealing with may well be the most important thing in their lives at that time. However, I can only review the case and advise the taxpayer utilizing the provisions of Maine tax law as a basis. Unless there is a compelling reason to do something different, I strive to be consistent with collection/compliance practices in the way cases are treated, as governed by the provisions of Maine tax law.

**From 36 MRSA §151-C (2)(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 in **2012** concerned the interest rate charged by the State in tax matters. I also mentioned interest in my 2013 and 2014 reports. 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? At this point, I don't think the interest rate is going to change.

Items of concern and possible legislative changes in the **2013 report** involved 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 in early 2013 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 2013 session of the Legislature 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, but was held over to the next session. The Act became law on January 12, 2014 and took effect on July 1, 2014, PL



2013, c. 442, enacting 36 MRSA §1760, sub-§95 (sales tax exemptions), sales of certain adaptive equipment, reading “sales to a person with a disability or a person at the request 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 who is issued a disability plate or placard by the Secretary of State pursuant to Title 29-A, section 521.”

Adaptive equipment had been exempt from the motor vehicle **excise tax** (36 MRSA §1483 (15) since enacted by the One Hundred and Twenty-Third Legislature in 2007. The recently completed legislative session amended §1483 (15) to also exempt from the excise tax the same adaptive equipment that is installed in for hire vehicles. Interestingly, there was no companion exemption from the sales tax.

However, the LD 1370 sales tax exemption from 2013/2014 extends only to that equipment sold directly to a disabled person or to a person at the request of a person with a disability. It did not address the situation where the adaptive equipment was installed on a vehicle previously for someone else. Thus, LD 1370 does not apply to the disabled Maine taxpayer who purchased an already adapted vehicle.

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 on the price of the adaptive equipment? This might 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 5½ %, the savings would be \$1,100 on a \$20,000 conversion.

### **Pensions**

In recent years there has been a lot of interest from former military personnel advocating that military pensions be exempt from Maine income tax. A \$6,000 exemption was implemented several years ago followed by the \$10,000 exemption for tax years beginning with 2014. The good news for military retirees is that for tax years beginning on or after January 1, 2016, benefits received under a military retirement plan, including survivor benefits, are fully exempt from Maine income tax.

Another area of concern I have mentioned in my earlier reports 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 in the other state. Governor LePage, Maine Legislators and others have been contacted by taxpayers concerning the Maine taxation of their pensions earned and taxed in another state, but received now as Maine residents.

The issue has been brought to my attention from several directions including correspondence in early 2013 entitled “double taxation on Mainers receiving pension from Massachusetts” from a Massachusetts (MA) retirees organization. They were

looking for assistance from Maine legislators 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.

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. I don't profess to know how much a MA resident pays to MA when the money is earned.

In my **2013 report**, I queried, 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? It was and LD 2242, An Act To Prevent Double Taxation of Retirement Benefits from Other States, was presented to the Legislative Council, but was not accepted, either initially or on appeal.

LD 1142, An Act Regarding the Taxation of Out-of-State Pensions was presented during the recent legislative session. The Summary explained that "the bill avoids double taxation of certain employee contributions to retirement benefit plans made in other states by exempting from Maine income tax the portion of retirement benefits attributable to the taxpayer's contribution to an employee retirement plan or an individual retirement account that was taxed by another jurisdiction." Available information indicates that LD 1142 was carried over to any Special or Regular Session of the 127<sup>th</sup> Legislature.

Reciprocity becomes an issue when discussing a possible income tax exemption for those who move to Maine with pensions earned in another state. LD 1142 does not resolve the issue for Maine retirees who move to a state that taxes pension benefits, it only resolves the issue for individuals who move to Maine from another state.

Since the earlier inquiries focused on MA taxpayers moving to and becoming Maine residents, I researched the issue a couple of years ago. I found that MA does grant an income tax exemption for retirement plan income from another state received by a MA resident if the other state grants reciprocal treatment to retirees from MA living in the other state. I have not researched reciprocity laws of any other states. Nor do I know the loss of revenue impact if LD 1142 should become law. Certainly it would positively affect MA residents and residents of other states who move to Maine, but how many Maine residents moving to other states would still be faced with double taxation of their Maine pension benefits?

Do I have any items of concern and possible legislative changes this year? Not to the extent of the last three years where changes have been implemented or at least addressed. However, one possible change I am still reviewing is how tax liens are handled. At this

point I do not know if any change I might propose would require legislation or merely a policy change or modification by MRS.

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 for some seven years. 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 the 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. If appropriate, the Advocate issues a To Whom It May Concern (TWIMC) statement over the Advocate's signature indicating that the tax lien provides an inaccurate representation of the taxpayer's Maine tax obligation and recommends 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 more than forty such statements. They seem to have been successful since several taxpayers have contacted the Advocate to advise that the statement helped to improve their credit situation.

However, more and more taxpayers ask about having a tax lien "withdrawn" like the IRS does. In my experience, taxpayers sometimes have the mistaken idea that when a tax debt has been paid and the lien has been released, they can simply go to a registry of deeds where a lien is recorded and physically remove it. Years ago, before electronic filing, that would have meant physically tearing the lien out of the book where it had been entered. I explain that doesn't happen, that a lien is like a deed to your house or a mortgage, that it is there in the registry forever, although later filed documents might modify it.

As an example, a lien was recorded in the registry of deeds on May 17, 2013 in Book 11345, Page 36. The debt was paid, a release of tax lien was issued and was recorded in the registry on January 14, 2014 in Book 12109, Page 209. Before electronic filing, a notation would be made in the margin of the filed lien, referencing the book and page of the release and vice-versa. With electronic filing, an entry is still made in the registry records referencing the release.

In recent years, the IRS has implemented a "fresh start" program. As one might imagine, many taxpayers who have a Maine income tax problem also have a federal income tax problem. A February 2011 announcement from the IRS stated, "In its latest effort to help struggling taxpayers, the Internal Revenue Service today announced a series of new steps to help people get a fresh start with their tax liabilities."

And, “the IRS will also modify procedures that will make it easier for taxpayers to obtain lien withdrawals. Liens will now be withdrawn once full payment of taxes is made if the taxpayer requests it. The IRS has determined that this approach is in the best interest of the government.”

How does the IRS program work? The taxpayer files a Form 12277, Application for Withdrawal of Filed Form 668(Y), Notice of Federal Tax Lien. The reasons for requesting withdrawal of the filed Notice of Federal Tax Lien (check appropriate boxes) are: (1) The Notice of Federal Tax Lien was filed prematurely or not in accordance with IRS procedures.

- (2) The taxpayer entered into an installment agreement to satisfy the liability for which the lien was imposed and the agreement did not provide for a Notice of Federal Tax Lien to be filed.
- (3) Withdrawal will facilitate collection of the tax.
- (4) The taxpayer, or the Taxpayer Advocate acting on behalf of the taxpayer, believes withdrawal is in the best interest of the taxpayer and the government.

Form 668 (Y) is the Notice of Federal Tax Lien, Form 668 (Z) is Certificate of Release of Federal Tax Lien and Form 10916 A is Withdrawal of Filed Notice of Federal Tax Lien After Release.

An IRS withdrawal notice states, “the proper official, in the office where the Notice of Federal Tax Lien was filed on MM/DD/YR, is authorized to update the records to show the withdrawal of the notice of lien for these taxes and additions.” So far as I know, this simply means cross-referencing the withdrawal to the lien. There are many lien releases, but not many IRS “withdrawals” recorded in the Kennebec County Registry of Deeds.

Whereas a taxpayer can send my To Whom It May Concern statement to the credit reporting agencies and to anyone else they want to and in my experience that works well, the big plus for a taxpayer utilizing the withdrawal methodology is this. The General Instructions for Form 12277, Application for Withdrawal of Filed Form 668(Y), Notice of Federal Tax Lien, include, “At your request, we will notify other interested parties of the withdrawal notice. Your request must be in writing and provide the names and addresses of the credit reporting agencies, financial institutions, and/or creditors that you want notified.” My presumption is that a credit reporting agency must remove the federal tax lien from a credit report once they receive a withdrawal notice, but trying to reach a credit reporting agency to confirm this has not been successful.

Further, although I have not done an exhaustive search, I have not been able to locate any sanction or penalty if a credit reporting agency does not remove the lien from a taxpayer’s credit report. It seems to me that my TWIMC letter serves the same purpose if it is accepted by a credit reporting agency that then removes any negative effect caused by the filing of the lien from the taxpayer’s credit history and credit reports.

In one instance this past year a taxpayer wanted another copy of my TWIMC letter because the local registry of deeds was going to record it in the registry and cross

reference it to the original lien. In another situation involving taxpayers with very similar names, I provided an attested copy of my TWIMC letter that was going to be recorded in the registry of deeds to better explain the identity of the two taxpayers. In other words, although there is a lien filed in the registry of deeds against John Doe, information in the to be recorded document explains that John Doe from Ashland is not John Doe from Houlton.

Every week I receive telephone calls, emails, letters and referrals 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, or am at least thought 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.

Much of the Advocate's work is done on the telephone. I maintain a notebook to keep a record of voicemail that is received. This has proven to be invaluable as it works a lot better than pink call slips, especially since some recorded telephone messages can run to a minute or more. 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 responds to much of the correspondence.

During the King and Baldacci Administrations, the Advocate would draft responses and the response would usually be sent by the DAFS Commissioner or Deputy Commissioner. With the LePage Administration, the Advocate usually responds directly to the inquiry. Effective July 1, 2012, while the Advocate continues to respond to inquiries regarding specific tax issues, the Office of Tax Policy within MRS responds to correspondence regarding administration of tax policy.

### **Examples of situations handled by the Taxpayer Advocate since the July 30, 2014 annual report.**

As I mentioned earlier, I trust I will always remember that to the taxpayer who contacts me, the tax situation they are presently dealing with may well be the most important thing in their lives at that time. Oftentimes, their tax problem is only the tip of their socioeconomic iceberg.

Of the tax situations we have dealt with over the past year, based purely on the number of instances, perhaps the one with the most contact and concern was the change in the Property Tax Fairness Credit from 2013 to 2014. Effective with tax year 2013, the Maine Residents Property Tax and Rent "Circuitbreaker" Program, commonly called tax and rent,

was replaced by the Property Tax Fairness Credit (PTFC). Governor LePage and MRS received many inquiries regarding the demise of the Circuitbreaker (tax and rent) program. Since it was a tax policy issue, Michael J. Allen, Ph.D., Acting Deputy Commissioner of Finance and Associate Commissioner for Tax Policy, responded on behalf of the Governor. Dr. Allen explained that the circuitbreaker program had been terminated and replaced by the PTFC program.

Nonetheless, I received a lot of correspondence and telephone calls regarding the PTFC program, mostly from taxpayers inquiring about their program benefits. Whereas at the end of the circuitbreaker program, the maximum benefit was \$1,600, for 2013 the maximum benefit under the PTFC program was \$400. Taxpayers' concerns were addressed in LD 1751, An Act to Provide Property Tax Relief to Maine Residents that was passed by the Legislature and approved by Governor LePage on April 17, 2014. The new law was effective for tax year 2014 and the maximum credit for a Maine resident is now \$600, \$900 if either spouse is at least 65 years old.

Anyone applying for a credit under the PTFC program must file a Maine income tax return. Since there was a separate application for the circuitbreaker, many did not have to file a Maine income tax return before. For the most part, I referred those who contacted me about the circuitbreaker and the new Property Tax Fairness Credit to the Income Tax Division. From my vantage point, they did a fine job responding and explaining the termination of the tax and rent program and the details of the new program. I did answer some inquiries myself and thus I became aware of the concerns taxpayers were expressing about the PTFC program.

The difference between the 2013 and the 2014 PTFC. For 2013 it looked like many PTFC participants had little or no income since their Social Security benefits that represented a significant portion of their annual income were not included in the benefit calculation. Similar to the circuitbreaker program, since the calculation of a taxpayer's 2014 PTFC benefit includes the taxpayer's Social Security benefits, the 2014 PTFC credit is based on a broader measure of income than a taxpayer's Maine adjusted gross income (that does not include Social Security).

Although my sample was a small one, I think it generally indicated the concerns that taxpayers have. A typical example was a taxpayer who had received \$400 for several years under the circuitbreaker, received \$300 under the 2013 PTFC program and \$47 in 2014. Some went from \$300 or \$400 in 2013 to \$0 because of Social Security benefits being included in the PTFC calculation.

According to information provided by Maine Revenue Services, from 2010 through 2012 there were 108,674; 109,094 and 99,659 applicants for the circuitbreaker program. By contrast, 84,591 applied for the PTFC in 2013 and 57,806 have applied so far for 2014. Whereas from 2010 through 2012 general circuitbreaker applicants received an average benefit of \$492, \$498 and \$528, PTFC applicants received an average benefit of \$271 in 2013 and \$273 in 2014. Although many that came to my attention did not receive the circuitbreaker maximum of \$1,600, many received \$800 or \$600 or \$400.

The total amount of circuitbreaker refunds from 2010 through 2012 was \$41,956,012; \$43,019,807 and \$42,170,207. By contrast, PTFC refunds totalled \$21,566,276 in 2013 and \$13,730,471 so far in 2014.

Proposals from Governor LePage and Legislators to amend the PTFC were presented at the recent legislative session, but none were implemented.

Effective October 1, 2013, Sales Tax Rates were temporarily increased from October 1, 2013, through June 30, 2015. The general sales tax rate of 5% increased to 5.5%. The 7% tax rate on the rental of living quarters increased to 8%. Recent legislation retains the general sales/use tax rate of 5.5% for purchases made on or after July 1, 2015 and the 8% rate on the casual rental of living quarters through December 31, 2015 when it increases to 9% effective January 1, 2016.

As before, on a regular 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, if the question/issue pertains to something better answered by Sales Tax, Compliance or Property Tax, by someone from those Divisions.

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.

The issue of the offset of federal income tax refunds to Maine is one that arises every year. Taxpayers who reach the Advocate are not pleased that their federal refund was offset to MRS. I explain the process and that in my experience, "No, MRS is not going to refund any of the offset." If appropriate, I point out to taxpayers that a paragraph on the Demand to Pay Notice that has been sent to them (by certified mail) 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." (**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, §5276-A, the Assessor will then offset any Maine income tax refund to which the taxpayer is entitled to the certifying agency. I explain that 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.”

Wage levies and bank levies are sometimes brought to my attention, usually by the affected taxpayer or by someone they have contacted. A common complaint is that the levy came out of the blue with no notice that it might happen. As with federal offsets, if appropriate, I point out to taxpayers that a paragraph on the Demand to Pay Notice that has been sent to them (by certified mail) contains a statement that “if payment in full is not postmarked or received within 10 days from the date you receive this notice, the Bureau will impose an additional penalty of 25% of the tax due and may: (a) levy (seize), and if necessary sell, your non-exempt property to cover the unpaid tax and the expenses of the levy: ....” “Property subject to levy includes any right, title and interest held in property whether real or personal, tangible or intangible, such as **salaries, wages, commissions, bank accounts, and real estate.**” (**emphasis added**)

When discussing a levy with a taxpayer, I indicate the above notice language and point out that the demand for payment notice was sent by certified mail. Often, a taxpayer will state they never received the notice. Sometimes the notice has been returned by the US Postal Service as unclaimed. In that case, the notice will then be sent by regular mail to the taxpayer at their last known address. More often than not, though, in checking certified mail records, I find that the notice was signed for by the taxpayer.

When working with a taxpayer to try to resolve a tax problem, especially when setting up a payment plan, the Compliance Division will ask the taxpayer to fill out a Personal Financial Statement (PFS), basically a listing of a taxpayer’s assets and liabilities. Sometimes taxpayers complain about the need for a 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.

Estimated Payments. When appropriate, I advise taxpayers with a Maine income tax problem, especially those who are self-employed and think they will owe money at filing time, to consider making estimated payments during the year. I point out that it would seem to be easier for financial planning to make four periodic payments during the year in April, June, September and January, rather than be faced with a large amount due in April that includes interest and penalties if payment is not made by April 15th. I recommend that they discuss the possibility of estimated payments with their accountant and in the meantime to work with MRS to try to resolve the pending matter in a mutually satisfactory manner.



We don't seem to receive many complaints about the excise tax on motor vehicles anymore. When we do, I explain that the motor vehicle excise tax in Maine presently generates more than \$200 million in annual revenue, mostly to municipalities and that the revenue their municipality collects from the annual excise tax is used for municipal purposes such as local road maintenance, construction and repair. Since we have the figures from the Property Tax Division, we mention the amount of excise tax collected by their municipality. Even in a small town, excise tax revenue may be more than several hundred thousand dollars. When I've communicated with taxpayers about excise tax, they're usually surprised to learn that the money does not go to the State.

Often when I'm discussing a Maine tax debt with a taxpayer, usually an income tax debt, I find that they know little about the Maine income tax return they have filed. They relate to me that their accountant did the return or it was done electronically through a tax filing program.

Sometimes a taxpayer will remark that the IRS accepted my return, why won't MRS? Oftentimes, this involves a business and federal Schedule C, Profit or Loss From Business. MRS can conduct its own independent audit and does not have to accept the federal adjusted gross income (FAGI) on the taxpayer's Maine income tax return or the figures on their Schedule C.

In many instances, however, MRS relies a good deal on what the IRS is using for a FAGI. MRS sends CP notices to taxpayers after MRS receives information from the IRS that the IRS has audited the taxpayer's return and determined additional income tax is due. Additional tax may be due on items such as income from unreported pension withdrawals, unemployment compensation, forgiven federal indebtedness and taxable wages. I sometimes ask a taxpayer, if you owed more to the IRS, didn't you think that you might owe more to the State as well? Most say the thought never occurred to them. Perhaps the answer is closer to their hoping that the State will not contact them. Resolution of a CP notice case usually involves the taxpayer providing an Account Transcript. An Account Transcript shows all of the federal transactions that have taken place with an account, the modifications that the IRS has made.

Even those who receive a CP assessment notice and acknowledge that they did owe the IRS (they usually do), are not often aware that they should have filed an amended Maine income tax return.

In difficult economic times, some taxpayers withdraw money from their pension or other retirement plans to live on. Although the standard proposed withholding is 20% federal and 5% for the State, in many of the situations that reach me there has been no withholding. More often than not, this creates a major tax problem when payment of income tax becomes due in April. In most cases, the taxpayer is advised to work with the Compliance Division to try to resolve the matter.

One taxpayer who lives very near to New Hampshire contacted the Governor's Office of Constituent Services wanting to know if the rumor was true that Maine had agents watching people buying in New Hampshire and returning to Maine. As I recall, there was such a project several years ago, but I am not aware of any present investigation.

**Interest and Penalty** The amount of interest and penalties that have been assessed on any given delinquent tax case is often mentioned and complained about when I am speaking with a taxpayer whose tax matter has been referred to me. I explain that under Maine tax law, interest and penalties accrue automatically without being assessed when a tax is not paid when it is due. They are not something that MRS decides to assess on a case by case basis, they are set by State statute.

In regard to interest, by statute, MRSA §186, "if the failure to pay a tax when required is explained to the satisfaction of the assessor, the assessor may abate or waive the payment of all or any part of that interest."

In regard to the waiver of penalties, §187-B (7) provides language that "the assessor shall waive or abate"... "if grounds constituting reasonable cause are established by the taxpayer or if the assessor determines that grounds constituting reasonable cause are otherwise apparent".

**Real Estate Withholding (REW)** We receive a few inquiries each year from out-of-state taxpayers who do not understand REW. Real estate withholding (REW) became effective on January 1, 1992 and applies to any Maine real property transferred after that date. Every buyer of Maine real property must withhold state income tax at the rate of 2½% from the total consideration paid (\$50,000 or more) for the property if the seller is not domiciled in Maine as of the date of closing. The seller should have been provided with a copy of a Notification to Seller(s) of Withholding Tax Requirement when their property was sold.

This is not a tax per se. REW is similar to a W-2 on earnings. If the seller has a recognized gain relating to the sale of their Maine property, they are required to file a Maine income tax return for the taxable period when the sale occurred regardless of the sale price of the property. The REW amount is claimed as an estimated tax payment on the taxpayer's Maine income tax return. REW withholding helps to ensure that a seller of Maine real estate will pay the appropriate amount of income tax to the State of Maine on the sale. The 2½% of the sale that is withheld at the time of the closing is sent to MRS and is credited to a taxpayer's Maine income tax account as an estimated tax payment awaiting their timely filing of a Maine income tax return for the year in which the property was conveyed.

In my experience, unfortunately, I sometimes think that whoever handles the transaction or conducts the closing does not do a very good job in explaining the REW process to the seller. Some sellers have thought it is their Maine tax on the sale and do not file a return. When these transactions are reviewed by MRS, some sellers are found to owe more while

some would have actually been entitled to a refund if they had filed a timely Maine income tax return.

## **Summation**

The legislation states that this annual report is a “report of activities” of the taxpayer advocate. As with the other three annual reports, I trust the information contained in this report is helpful in understanding what it is that I do. It represents a pretty good cross section of what I have worked on over the past year.

In my now eighteen years as Taxpayer Advocate the job pretty much remains the same. Taxpayers have tax problems with anything and everything - assessments, bank and wage levies, offsets, tax liens, payment plans, nonfiler issues, communication issues, issues with benefit programs such as PTFC, inattention to their tax matters.

Some of this may be repetitious from earlier reports, but I liked what I said then and my earlier thoughts are still applicable. As I’ve said before, I spend much of the day on the telephone and on the computer reviewing and analyzing taxpayer situations. The matters that reach me are rarely boring and working on them is often like putting a puzzle together. 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, the DAFS Commissioner’s staff and Legislative Aides can attest, I am often Paul Harvey with “*The Rest of the Story*”.

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.

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?

In the end, what I try to accomplish is to carry out the duties and responsibilities of the Advocate to the best of my abilities, to do the right thing that is fair to both the taxpayer and to the State of Maine under the umbrella of Maine tax law.