

MAINE STATE LEGISLATURE

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STATE OF MAINE
MAINE BOARD OF TAX APPEALS
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Chairman

RICHARD A. NASS
Board Member

D. KELLEY YOUNG
Board Member

PAUL L. BOURGET
Chief Appeals Officer

2018 ANNUAL REPORT OF THE MAINE BOARD OF TAX APPEALS (BTA)

Pursuant to 36 M.R.S. § 151-D(10), the following constitutes the annual report of the Maine Board of Tax Appeals (the “Board”) for calendar year 2018. Questions regarding this report should be directed to the Board’s Appeals Office at 134 State House Station, 19 Elkins Lane, Elkins Building, Augusta, Maine 04333-0134, or directly to the Board’s Chief Appeals Officer, Paul Bourget, at 207-287-2862.

1. Board History and Structure

The Board was established on July 1, 2012, as an independent entity within the Department of Administrative and Financial Services to provide taxpayers with a fair system for resolving disputes with Maine Revenue Services (“MRS”).¹ The Board is committed to ensuring due process and to reaching a speedy, just, and inexpensive resolution to all appeals filed with it. The Board consists of three Board members appointed by the Governor and confirmed by the Legislature, and is supported by an Appeals Office presently staffed by two Appeals Officers and one Administrative Assistant. Prior to creation of the Board, MRS conducted its own administrative tax controversy reviews.

¹ The creation of the independent tax appeals office contributed to Maine’s having received the grade of “A” on the Council on State Taxation (“COST”) Scorecard for 2013 and 2016. The scorecard is a tri-annual summary of “the fairness of the states’ laws and regulations for state tax administration and appeal of state tax matters.” Maine was one of only eight states to receive an “A” in 2013 and one of only four states to receive an “A” in 2016.

Concurrent with the Superior Court, the Board has jurisdiction over appeals involving the following types of taxes and fees:

- Individual and corporate income taxes
- Sales, use, and service provider taxes
- The estate tax
- The franchise tax
- The insurance company tax
- Special and other taxes and fees, including the cigarette, tobacco, potato, and mahogany quahog taxes, and the prepaid wireless telecommunications fee under Title 35-A of Me. Rev. Stat.

The Board is not related to the State Board of Property Tax Review and does not have jurisdiction over property tax disputes, other than the following:

- Business Equipment Tax Reimbursement (BETR) and
- Business Equipment Tax Exemption (BETE) disputes.

2. Appeals Procedure

The Board's appeal process is set forth in 36 M.R.S. § 151-D and 18-674 C.M.R. ch. 100. Taxpayers having a dispute with MRS must first request that MRS reconsider its position in the dispute. If the amount at issue was not less than \$1,000 and the taxpayer is still aggrieved following reconsideration, then the taxpayer may appeal the dispute to the Board.

Once an appeal is filed with the Board, an Appeals Officer examines the facts and issues presented and the applicable law. Based on his or her examination, the Appeals Officer drafts a recommended decision for the Board to consider when it meets to review the appeal and to make its final decision. The parties are permitted to file a written statement directly to the Board and may request to speak to the Board in person at its meeting. After considering the recommended decision and the parties' submissions and statements, the Board members vote to either adopt the recommended decision as drafted, adopt it with modifications, return it to the Appeals Officer for further proceedings, or reject it and issue their own decision.

3. Appeals Filed with the Board in 2018

Twenty tax disputes in the total amount of \$4,748,059 were filed with the Board between January 1, 2018, and December 31, 2018. In ten of those cases (50%), the taxpayers filed and prosecuted their own appeals without an attorney or other representative. In 16 of the appeals (80%), the taxpayers requested to have informal conferences with the Appeals Officer and MRS.

Dollar amounts of the appeals filed in 2018 ranged as follows:

Less than \$5,000:	3	
\$5,000 - \$50,000:	7	(35%)
\$50,001 - \$100,000:	3	
\$100,001 - \$900,000:	4	(20%)
\$900,001 - \$1,000,000:	2	
<u>More than \$1,000,000:</u>	<u>1</u>	
Total	20	

Tax types of the appeals filed in 2018 were as follows:

Individual Income Tax:	4	(20%)
Corporate Income Tax:	1	
Sales/Use/Service Provider Tax:	11	(55%)
Wireless Telecom Fees:	3	
<u>Other (setoff of a tax refund:</u>	<u>1</u>	
Total:	20	

4. Appeals Currently Pending Before the Board

Presently, there are 16 appeals pending before the Board, totaling \$4,612,303. The types of taxes in these controversies are as follows:

Individual Income Tax:	3	(18%)
Corporate Income Tax:	1	
Sales/Use/Service Provider Tax:	10	(59%)
<u>Wireless Telecom Fees:</u>	<u>2</u>	
Total:	16	

5. Cases Closed in 2018

The Board closed 22 appeals in 2018, issuing written decisions in 17 (77%) of those cases. Five cases were decided wholly in favor of MRS (29%), one case was decided wholly in favor of the taxpayer (6%), and the remaining eleven cases were decided partly in favor of MRS and partly in favor of the taxpayer (65%). An additional five appeals were settled or resolved between the parties without a written decision by the Board. The dollar amount of the cases closed in 2018 was \$2,393,215.

The tax types of appeals closed by the Board in 2018 were as follows:

Individual Income Tax:	5	(23%)
Corporate Income Tax:	1	
Sales/Use/Service Provider Tax:	14	(64%)
Other (Potato Tax):	1	
<u>Other (setoff of a tax refund)</u>	<u>1</u>	
Total:	22	

6. Published Decisions

The Board published nine redacted decisions in 2018 covering a variety of tax types and tax issues. The Board publishes its written decisions on its website in redacted format so as to protect taxpayer identities and the confidentiality of tax information. The Board has 37 redacted decisions available on its website for public review and reference: <http://www.maine.gov/boardoftaxappeals/decisions>. The Board's collection of redacted decisions is a Maine tax law resource for taxpayers and tax practitioners beyond the bulletins and publications issued by Maine Revenue Services. In the summer of 2018, LexisNexis began publishing the Board's decisions in searchable format along with their other State of Maine administrative materials. The Board's decisions are now available through the Westlaw and Lexis online legal research services, as well as through the Maine Law Library and the Maine State Library (Digital

Commons). The University of Maine School of Law has also assigned a judicially recognized Uniform Maine Citations format for citing Board decisions.

Because the Board’s decisions are appealable to the Superior Court, the Board does not publish them until after the 60-day appeal period has passed. Furthermore, to ensure the integrity of its published decisions, the Board postpones publishing any decisions that have been appealed to the Superior Court until the matter has been resolved by the courts.

7. Superior Court Review of Board Decisions

Decisions of the Board are appealable to the Superior Court. In 2018, there were three appeals of Board decisions to the Superior Court, bringing the historic total number of appeals from Board decisions to 13 since the Board’s inception in 2012. The outcome and status of these 13 appeals to Superior Court is set forth on the following chart:

	Board Action	Superior Court	Law Court
Decided--Prevailing party			
2016	MRS (9 months)	MRS (19 months)	Pending (9 mos.)
2015	Taxpayer (10 mos.)	MRS (36 months)	Not yet filed–N/A
2013	Taxpayer (5 mos.)	MRS (33 months)	Taxpayer (11 mos.)
2013	MRS (6 months)	Taxpayer (29 mos.)	MRS (12 months)
2013	Taxpayer (8 mos.)	MRS (12 months)	Withdrawn (2 mos.)
Resolved			
2017	Taxpayer (12 mos.)	Stip. Dismiss. (9 months)	N/A
2016	Taxpayer (8 mos.)	MRS (Consent) (3 mos.)	N/A
2016	MRS (12 months)	Withdrawn (8 mos.)	N/A
2013	MRS (10 months)	Withdrawn (22 mos.)	N/A
2014	MRS (10 months)	Withdrawn (37 mos.)	N/A
Pending			
2018	MRS/Taxpayer (13 mos.)	Pending (4 months)	--
2018	MRS/Taxpayer (11 mos.)	Pending (6 months)	--
2018	MRS (13 mos.)	Pending (10 months)	--

Of the cases listed above, only five have been fully litigated to a decision in the Superior Court. Regarding those five cases, the average length of time between the date of filing with the

Board and the Board's decision was 8 months, while the average length of time between the date of Superior Court filing and Superior Court decision was 26 months.

For cases closed by written Board decision in 2018, the average length of time between the filing of the appeal and the issuance of the decision was 10 months, and the average time pending for all cases closed in 2018 was 9 months.

8. Direct Appeals of Non-BTA Cases to the Superior Court

Pursuant to 36 M.R.S. § 151, tax cases may be appealed directly to the Superior Court from an MRS reconsidered decision without Board involvement. Presently, only three non-BTA tax appeals are pending in the Maine court system—two filed in 2018 and one filed in 2017.

In 2018, three “direct appeals” were filed with the Superior Court. All of those appeals were filed by pro-se appellants, and it appears that none of the appellants were given notice of their right to appeal from MRS's determination to the Board. One of the “direct appeals” was dismissed after three months for failure of the pro-se appellant to follow the Superior Court rules, while the second and third cases remain active. MRS has, however, filed a motion to dismiss one of those remaining cases. In that case, MRS initially denied relief on reconsideration because it determined that the taxpayer was untimely in requesting relief. Under such circumstances, MRS notifies the taxpayer that he or she may appeal to the Superior Court but not to the Board, regardless of the amount of tax or refund at issue in the reconsideration request. *Contra* 36 M.R.S. § 151(2).

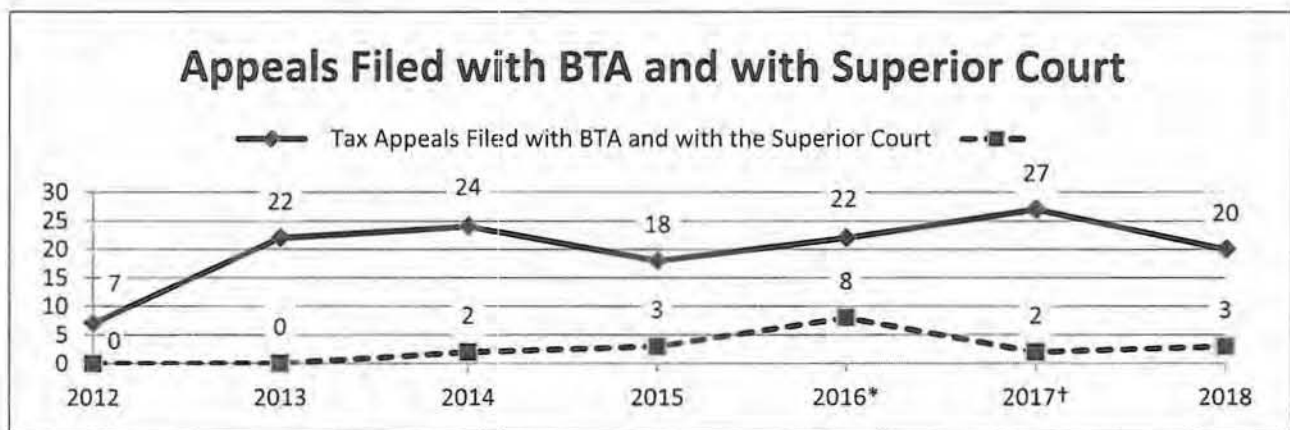
In 2017, two “direct appeals” were taken to Superior Court. One of those appeals was consolidated with a previously filed (2015) appeal from a BTA decision, and both matters were decided by the Superior Court in 2018. The other “direct appeal” taken in 2017 remains pending in the Superior Court.

In 2016, one “direct appeal” was filed with the Superior Court. That matter was decided by the Superior Court in 2017 and was further appealed to the Maine Law Court in that year. The case was finally decided by the Law Court in 2018. Additionally, a group of seven cases having similar issues and bases of assessment were appealed directly to the Superior Court in May 2016. Those cases were settled and dismissed by agreement in April 2017.

In 2015, three “direct appeals” to the Superior Court were filed, two of which were filed by pro-se appellants. Both pro-se appeals were dismissed by the court for failure of the appellants to follow Superior Court rules. The third appeal was dismissed in 2017 by agreement of the parties.

In 2014, two “direct appeals” were taken to the Superior Court. Both of these cases were later dismissed by agreement of the parties—one after 16 months and the other after two months.

Below is a chart summarizing the number of cases filed with the Board and those filed directly with the Superior Court.



* 2016—A group of seven cases having similar issues and bases of assessment were appealed directly to the Superior Court in May 2016. Those cases subsequently settled in April 2017. An eighth, unrelated case was filed with the Superior Court in November 2016 is now pending in the Law Court.

† 2017—A group of 10 cases having similar issues and bases of assessment were appealed to the Board of Tax Appeals in December 2017.

9. Taxpayer Access to the Board

Taxpayers may appeal to the Board from the final agency action of MRS, that is, MRS's decision on a Taxpayer's request for reconsideration of an assessment, refund denial, or other MRS determination. Taxpayers are notified of their right to appeal to the Board by language contained in the MRS reconsidered decision. MRS has, however, imposed some limitations on this notice requirement, such as that regarding appeals from its untimeliness determinations described in section 8 of this report, above. There may be other MRS-imposed exceptions.

The Board also maintains a website at www.maine.gov/boardoftaxappeals containing information about the tax appeal process, links to Maine's tax statutes and the Board's rules of practice and procedure, links to the Board's redacted decisions, and links to the MRS, IRS, and Maine Superior Court websites. Reciprocal links to the Board's website are also located on the MRS and the DAFS websites.

Finally, the Board maintains an information booth at the annual Maine Tax Forum, which is a tax practitioner educational symposium held in Augusta for two days each November. At the Forum, tax practitioners who might not be aware of the Board are provided an opportunity to meet and converse with the Board's Appeals Officers and Board Members. In 2018, both of the Board's Appeals Officers and two of the Board's three Board Members attended the Forum.

Respectfully submitted,



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Date: December 20, 2018