

MAINE STATE LEGISLATURE

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Chairperson

RICHARD A. NASS
Board Member

D. KELLEY YOUNG
Board Member

PAUL L. BOURGET
Chief Appeals Officer

2019 ANNUAL REPORT OF THE MAINE BOARD OF TAX APPEALS (BTA)

The following is the annual report of the Maine Board of Tax Appeals (the “Board”) for calendar year 2019. 36 M.R.S. § 151-D(10). 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 that all parties before it receive due process and a speedy, just, and inexpensive resolution in the appeals filed with it. The Board consists of 3 Board members that are appointed by the Governor and confirmed by the Legislature. The Board is supported by an Appeals Office presently staffed by 2 Appeals Officer positions and 1 part-time Administrative Assistant.² Prior to creation of the Board, MRS conducted its own reviews of administrative tax controversies.

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 periodic summary of “the fairness of the states’ laws and regulations for state tax administration and appeal of state tax matters.” Maine was 1 of only 8 states to receive an “A” in 2013 and 1 of only 4 states to receive an “A” in 2016.

² There is one Chief Appeals Officer position and one subordinate Appeals Officer position. The Administrative Assistant is shared between BTA, the State Board of Property Tax Review, and the State Civil Service Appeals Board.

As long as the amount in controversy is greater than or equal to \$1,000, taxpayers have the option of appealing disputes involving the following taxes and fees either to the Board or to the Superior Court:

- 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 the Maine Revised Statutes

Also, although the Board is not related to the State Board of Property Tax Review and does not have jurisdiction over most property tax disputes, it does have jurisdiction over appeals from MRS's Business Equipment Tax Reimbursement (BETR) and the Business Equipment Tax Exemption (BETE) determinations.

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 ask MRS to reconsider its position. Following reconsideration, and if the amount of the dispute is greater than or equal to \$1,000, the taxpayer may then appeal to the Board. Once an appeal is filed with the Board, an Appeals Officer examines the issues and facts presented and the applicable law. Based on his or her examination, the Appeals Officer then prepares a recommended decision for the Board to consider when it meets to decide the appeal. The parties may request to present to the Board at its meeting and may submit an additional written statement directly to the Board. After considering the recommended decision and the parties' submissions, 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. 36 M.R.S. § 151-D(10)(I)(1-4).

3. Appeals Filed with the Board in 2019

There were 21 tax disputes filed with the Board between January 1, 2019, and December 31, 2019, in the total amount of \$3,839,825. In 7 of those cases (33%), the taxpayers filed and prosecuted their own appeals without an attorney or other representative. In 14 of the appeals (67%), the taxpayers requested to have informal conferences with the Appeals Officer and MRS.

The dollar amounts of the appeals filed in 2019 were as follows:

Less than \$5,000:	4	(19%)
\$5,000 - \$50,000:	7	(33%)
\$50,001 - \$100,000:	3	(14%)
\$100,001 - \$900,000:	5	(24%)
\$900,001 - \$1,000,000:	1	(5%)
<u>More than \$1,000,000:</u>	<u>1</u>	<u>(5%)</u>
Total	21	

The tax types of the appeals filed in 2019 were as follows:

Individual Income Tax:	4	(19%)
Corporate Income Tax:	5	(24%)
Sales/Use/Service Provider Tax:	6	(29%)
BETR/BETE:	4	(19%)
Pine Tree Zone:	1	(5%)
<u>Educational Opportunity Tax Credit:</u>	<u>1</u>	<u>(5%)</u>
Total:	21	

4. Cases Closed in 2019

The Board closed 20 appeals in 2019 (1 filed in 2016, 10 filed in 2018, and 9 filed in 2019), in the total amount of \$3,035,817. The Board issued written decisions in 13 (65%) of those cases. There were 9 cases decided wholly in favor of MRS (69%) and 4 cases decided partly in favor of MRS and partly in favor of the taxpayer (31%). There were no cases decided wholly in favor of the taxpayer. An additional 7 appeals were settled or resolved between the parties without a written decision by the Board.

The dollar amounts of the appeals closed in 2019 were as follows:

Less than \$5,000:	2	(10%)
\$5,000 - \$50,000:	10	(50%)
\$50,001 - \$100,000:	3	(15%)
\$100,001 - \$900,000:	4	(20%)
\$900,001 - \$1,000,000:	0	
<u>More than \$1,000,000:</u>	<u>1</u>	<u>(5%)</u>
Total	20	

The tax types of appeals closed by the Board in 2019 were as follows:

Individual Income Tax:	6	(30%)
Estate Tax:	1	(5%)
Corporate Income Tax:	1	(5%)
Sales/Use/Service Provider Tax:	8	(40%)
<u>BETR/BETE:</u>	<u>4</u>	<u>(20%)</u>
Total:	20	

For cases closed by written decision of the Board in 2019, the average time between filing of the appeal and issuance of the decision was 9 months. The average time pending for all cases closed in 2019 was 7 months.³

5. Appeals Currently Pending Before the Board

There were 16 appeals pending before the Board at the end of 2019 totaling \$5,455,089. Of these 16 appeals, 4 were filed with the Board in 2018 and the remaining 12 were filed in 2019. The dollar amounts of the pending appeals are as follows:

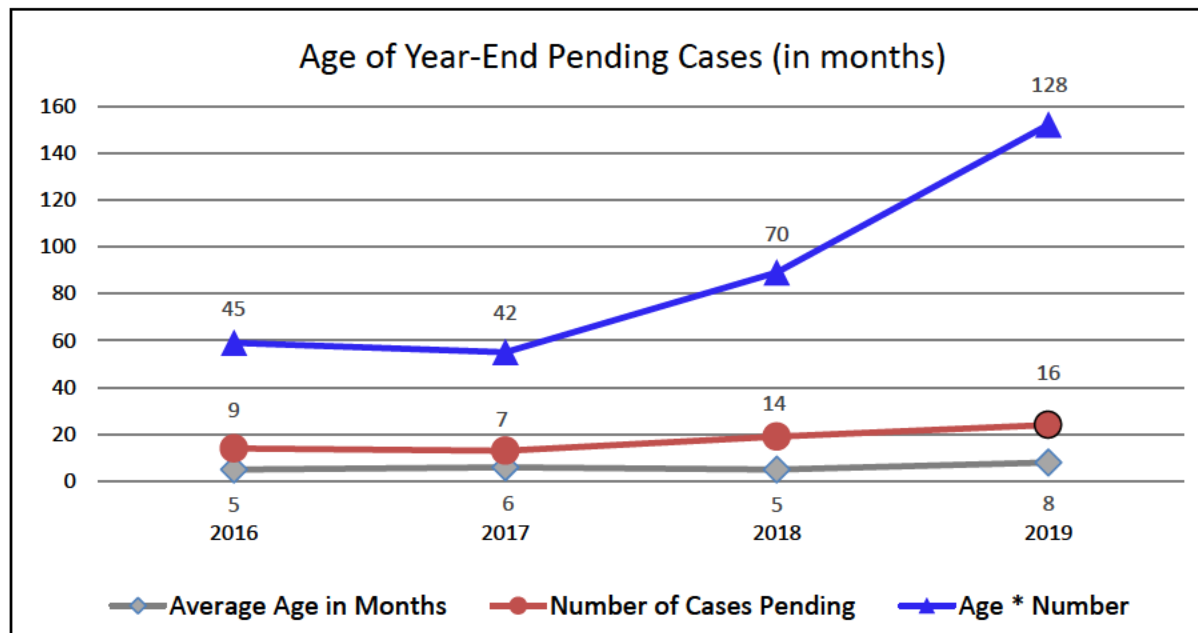
Less than \$5,000:	2	(13%)
\$5,000 - \$50,000:	5	(31%)
\$50,001 - \$100,000:	1	(6%)
\$100,001 - \$900,000:	4	(25%)
\$900,001 - \$1,000,000:	3	(19%)
<u>More than \$1,000,000:</u>	<u>1</u>	<u>(6%)</u>
Total	16	

³ Two cases decided by the Board in 2019 are not included in these computations because those cases had been stayed for more than 1 year due to criminal tax proceedings and are unrepresentative of 2019 BTA case pendency.

The types of taxes involved in the pending controversies are as follows:

Individual Income Tax:	1	(6%)
Corporate Income Tax:	5	(31%)
Sales/Use/Service Provider Tax:	8	(50%)
Pine Tree Zone:	1	(6%)
<u>Educational Opportunity Tax Credit:</u>	<u>1</u>	<u>(6%)</u>
Total:	16	

The average age of the appeals that were pending at the end of 2019 was 8 months, which is greater than in previous years. Also, the number of cases pending at the end of 2019 (16) was greater than in previous years. Both of these increases, set out on the following chart, are the result of the staffing shortage described in section 10 of this report. These increases suggest that, going forward, appeals will be completed by the Board less quickly.



6. Published Decisions

The Board publishes its written decisions on its website in redacted format so as to protect taxpayer identities and the confidentiality of tax information. In 2019, the Board had 14

decisions ready for redaction and publication covering a variety of tax types and important tax issues. Because of the staffing shortages described in section 10 of this report, however, these decisions have not yet been processed and published. Once these 14 new cases are processed and published, the Board will have 51 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 MRS. In addition to the Board's website, the Board's decisions are 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 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. Also, 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 2019, there were 3 appeals of Board decisions to the Superior Court, bringing the total of appeals from Board decisions to 16 since the Board's inception in 2012. The outcome and status of these 16 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)	MRS (11 mos.)
2015	Taxpayer (10 mos.)	MRS (36 months)	N/A
2013	Taxpayer (5 mos.)	Taxpayer (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 at Court			
2019	Taxpayer (8 months)	MRS (Consent) (1 month)	N/A
2018	MRS/Taxpayer (13 mos.)	Stip. Dismiss. (5 months)	N/A
2017	Taxpayer (12 mos.)	Stip. Dismiss. (7 months)	N/A
2016	Taxpayer (8 mos.)	MRS (Consent) (1 mos.)	N/A
2016	MRS (12 months)	Withdrawn (6 mos.)	N/A
2014	MRS (10 months)	Withdrawn (12 mos.)	N/A
2013	MRS (10 months)	Withdrawn (22 mos.)	N/A
Pending in Court			
2019	MRS (17 months)	Pending (2 months)	--
2019	MRS (10 months)	Pending (7 months)	--
2018	MRS/Taxpayer (11 mos.)	Pending (18 months)	--
2018	MRS (13 mos.)	Pending (23 months)	--

Of the cases listed above, only 5 have been fully litigated to a decision in the Superior Court. Of those 5 cases, the average time between filing and decision by the Board was 8 months, while the average time between filing and decision in Superior Court was 26 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 2 non-BTA tax appeals are pending in the Maine court system—1 filed in 2019 and 1 filed in 2017.

In 2018, 3 “direct appeals” were filed with the Superior Court. All of those appeals were filed by pro-se appellants. Of the “direct appeals” filed in 2018, 1 was dismissed after 3 months for failure of the pro-se appellant to follow the Superior Court rules. The other 2 appeals were dismissed in 2019, 1 by agreement of the parties and the other upon MRS’s request.

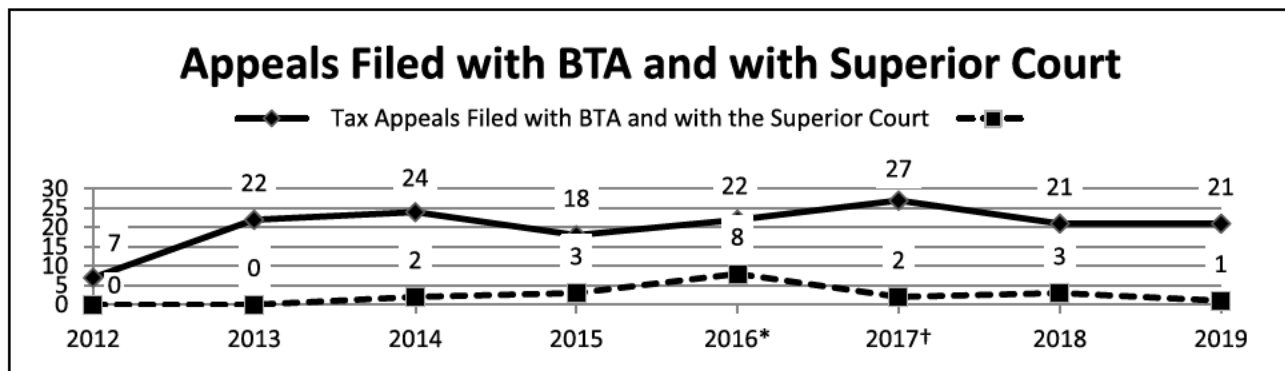
In 2017, 2 “direct appeals” were taken to Superior Court. Of those appeals, 1 was consolidated with a previously filed (2015) appeal from a BTA decision, and both of those matters were decided by the Superior Court in 2018. The other “direct appeal” taken in 2017 remains pending in the Superior Court.

In 2016, 1 “direct appeal” was filed with the Superior Court. That matter was decided by the Superior Court in 2017 and was then further appealed to the Maine Law Court in 2017. The matter was finally decided by the Law Court in 2018. Also, in 2016, a group of 7 cases having similar issues and bases of assessment were appealed directly to the Superior Court. Those cases were settled and dismissed by agreement of the parties in April 2017.

In 2015, 3 “direct appeals” to the Superior Court were filed, 2 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, 2 “direct appeals” were taken to the Superior Court. Both of these cases were later dismissed by agreement of the parties—1 after 2 months and the other after 16 months.

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



* 2016—A group of 7 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.

† 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 an MRS reconsideration decision relating to an assessment, a refund denial, or another MRS determination when the amount in controversy is greater than or equal to \$1,000. Taxpayers are notified of their right to appeal by language contained in the MRS reconsidered decision. Also, the Board maintains a website at www.maine.gov/boardoftaxappeals containing information about the tax appeal process and links to Maine's tax statutes, the Board's rules of practice and procedure, the Board's redacted decisions, and several relevant websites.

The Board also maintains an information booth at the annual Maine Tax Forum, a tax practitioner educational symposium held in Augusta for 2 days each November. At the Forum, tax practitioners who might be unaware of the Board are provided an opportunity to meet and converse with the Board's Appeals Officers and Members. In 2019, both of the Board's Appeals Officers and 2 of the 3 Board Members attended the Forum.

10. Staffing Shortage

The Board lost 1 subordinate Appeals Officer position in the State budget reduction initiative effective October 1, 2017. That reduction left the Appeals Office with only 1 subordinate Appeals Officer and 1 Chief Appeals Officer. The impact of that reduction is now being felt, with 8 cases ready for and awaiting decision preparation. Of those 8 appeals, 2 have been in waiting status for over 6 months. Insufficient staffing is also the reason the Board has 14 decisions ready for redaction and publication but not yet published, as mentioned in section 6 of this report.

The Legislature intended that the Board provide a "speedy, efficient, just and inexpensive disposition" of all appeals filed with it, and inadequate staffing may be jeopardizing this intent.

36 M.R.S. § 151-D(10).

In addition, the Board’s sole subordinate Appeals Officer has retired from State service effective December 27, 2019. Interviewing for that position vacancy will commence in early January 2020. This vacancy will further delay BTA efforts.

11. Board Member Vacancies

The Board Members and their term dates are set forth on the following chart. At present, 2 Board Members, Mr. Nass and Mr. Kelleher, are continuing to serve past term end dates by agreement.

Board Member	Term 1 Dates	Term 2 Dates	Term 3 Dates
Richard A. Nass (One year initial)	09/06/12– 09/05/13	03/27/14– 09/05/16	10/30/17– 09/05/19
D. Kelley Young	10/26/17– 09/05/20	09/06/20– 09/05/23 (proj)	N/A
William J. Kelleher (Three year initial)	09/06/12– 09/05/15	01/27/16– 09/05/18	N/A

The law regarding BTA Board Member vacancies and appointments is as follows:

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

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

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Two members of the board constitute a quorum. A vacancy in the board does not impair the power of the remaining members to exercise all the powers of the board.

36 M.R.S. § 151-D(2), (4), (5).

It is important to the continued vitality of the tax appeals process that replacement Board Members are appointed as soon as possible.

Respectfully submitted,

Date: January 23, 2020

/s/ Paul L. Bourget
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