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JANET T. MILLS
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STATE OF MAINE
MAINE BOARD OF TAX APPEALS
134 STATE HOUSE STATION
19 ELKINS LANE, ELKINS BLDG
AUGUSTA, MAINE
04333-0134
www.maine.gov/boardoftaxappeals

D. KELLEY YOUNG
Chairman

JEANNE GIBSON
Board Member

ANDREW WELLS
Board Member

DEREK A. JONES
Acting Chief Appeals Officer

February 1, 2022

Joint Standing Committee on Taxation
c/o Legislative Information
100 State House Station
Augusta, Maine 04333-0100

RE: 2021 Annual Report of the Maine Board of Tax Appeals (BTA). 36 M.R.S. § 151-D(10).

Dear Senator Chipman and Representative Terry:

Please find attached the annual report of the Maine Board of Tax Appeals, describing the activities of the Board during 2021.

Sincerely,

Derek A. Jones

Acting Chief Appeals Officer
Maine Board of Tax Appeals
207-287-2863
derek.a.jones@maine.gov



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2021 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 2021. 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 Acting Chief Appeals Officer, Derek A. Jones, at 207-287-2863 or by email at derek.a.jones@maine.gov.

Table of Contents

Section	Page
1. Board History and Structure	3
2. Appeals Procedure	4
3. Appeals Filed with the Board in 2021	5
4. Cases Closed in 2021	5
5. Appeals Currently Pending Before the Board	6
6. Published Decisions	8
7. Superior Court Review of Board Decisions	8
8. Direct Appeals of Non-Board Cases to the Superior Court	9
9. Taxpayer Access to the Board	9
10. Staffing	9
11. Recommendations	10

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”). 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 the Acting Chief Appeals Officer and 1 part-time Administrative Assistant.¹ Prior to creation of the Board, MRS conducted its own reviews of administrative tax controversies.

Where the amount in controversy is \$1,000 or more, taxpayers may appeal 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.

¹ The Administrative Assistant is shared between the Board of Tax Appeals, the State Board of Property Tax Review, and the State Civil Service Appeals Board.

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 this 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 2021

There were 12 tax disputes filed with the Board between January 1, 2021, and December 31, 2021, in the total amount of \$1,072,008.65. In 11 of those cases (92%), the taxpayers filed and prosecuted their own appeals without an attorney or other representative.² In 5 of the appeals (42%), the taxpayers requested to have informal conferences with the Appeals Officer and MRS.

The dollar amounts of the appeals filed in 2021 were as follows:

No information ³ :	1	(8%)
Less than \$5,000:	4	(33%)
\$5,000 - \$50,000:	3	(25%)
\$50,001 - \$100,000:	1	(8%)
\$100,001 - \$1,000,000:	3	(25%)
<u>More than \$1,000,000:</u>	<u>0</u>	<u>(0%)</u>
Total	12	

The tax types of the appeals filed in 2021 were as follows:

Individual Income Tax:	5	(42%)
Corporate Income Tax:	1	(8%)
Sales/Use/Service Provider Tax:	4	(33%)
BETR/BETE:	1	(8%)
<u>Estate Tax:</u>	<u>1</u>	<u>(8%)</u>
Total:	12	

4. Cases Closed in 2021

The Board closed 19 appeals in 2021 (6 filed in 2019, 11 filed in 2020, and 2 filed in 2021), in the total dollar amount of \$4,099,840.43. The Board issued written decisions in 14 of those cases (74%). The 5 appeals that were closed without a written decision were settled or

² This number includes legal entities not utilizing outside counsel.

³ One appeal was filed without sufficient information to determine the amount at issue, and no case management conference was held before the submission of this report.

resolved between the parties. The dollar amount of the cases decided by the Board was \$3,824,397.83 (93%), while the dollar amount of the cases withdrawn was \$275,442.60 (7%).

Of the 14 written decisions, 10 cases were decided wholly in favor of MRS (72%), and 4 cases provided some relief to the taxpayer.

The dollar amounts of the 19 appeals closed in 2021 were as follows:

Less than \$5,000:	4	(21%)
\$5,000 - \$50,000:	7	(37%)
\$50,001 - \$100,000:	2	(11%)
\$100,001 - \$1,000,000:	5	(26%)
<u>More than \$1,000,000:</u>	<u>1</u>	<u>(5%)</u>
Total	19	

The tax types of appeals closed by the Board in 2021 were as follows:

Individual Income Tax:	11	(58%)
Corporate Income Tax:	3	(16%)
<u>Sales/Use/Service Provider Tax:</u>	<u>5</u>	<u>(26%)</u>
Total:	19	

For cases closed by written decision of the Board in 2021, the average time between filing of the appeal and issuance of the decision was 484 days.⁴

5. Appeals Currently Pending Before the Board

There were 11 appeals pending before the Board at the end of 2021 totaling \$5,487,348.91. Of these 11 appeals, 1 was filed with the Board in 2020 and the other 10 were filed in 2021.

⁴ This represents an increase of roughly 100 days over 2020. Several factors contributed to this increase including expansion of deadlines to accommodate the taxpayers during the Covid-19 pandemic and the retirement of the Chief Appeals Officer.

The dollar amounts of the pending appeals are as follows:

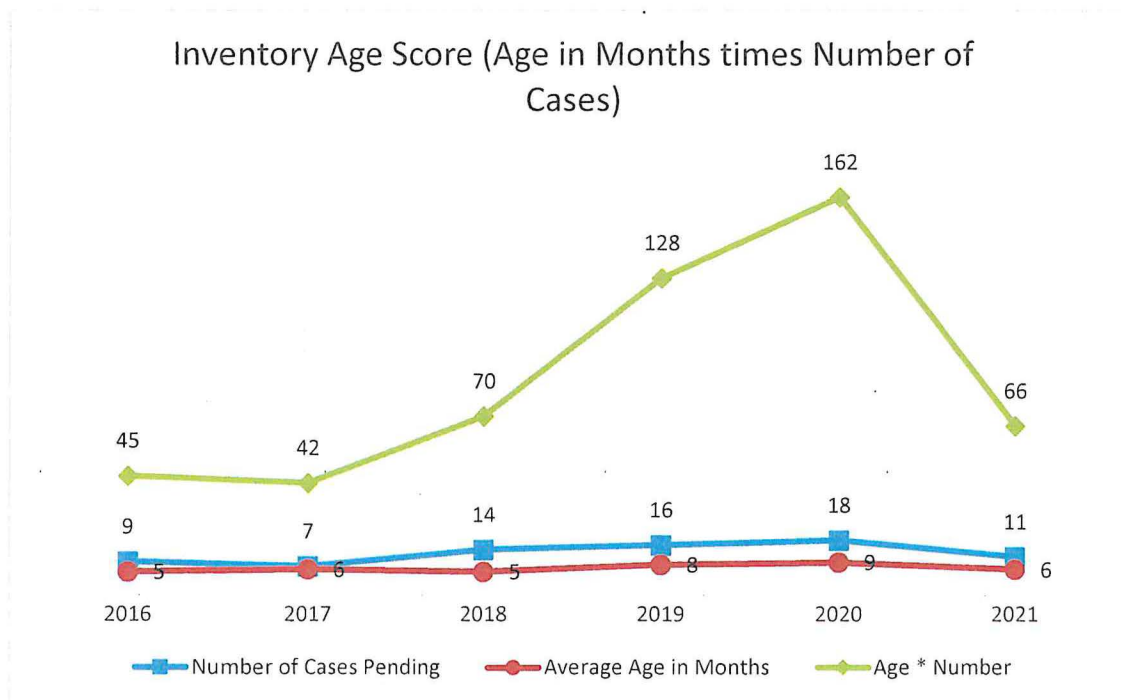
No Information ⁵ :	1	(9%)
Less than \$5,000:	3	(27%)
\$5,000 - \$50,000:	3	(27%)
\$50,001 - \$100,000:	1	(9%)
\$100,001 - \$1,000,000:	2	(18%)
<u>More than \$1,000,000:</u>	<u>1</u>	<u>(27%)</u>
Total	11	

The tax types of the pending cases are as follows:

Individual Income Tax:	5	(46%)
Corporate Income Tax:	2	(18%)
Sales/Use/Service Provider Tax:	2	(18%)
BETR/BETE:	1	(9%)
<u>Estate Tax:.....</u>	<u>1</u>	<u>(9%)</u>
Total:	11	

The number of cases pending at the end of 2021 (11) was less than in previous years.

Furthermore, the average age of the pending appeals was 178 days (roughly 6 months), which is less than in 2020.



⁵ One appeal was filed without sufficient information to determine the amount at issue, and no case management conference was held before the submission of this report.

6. Published Decisions

The Board's written decisions address a variety of tax types and important tax issues. The Board publishes its written decisions on its website in redacted format to protect taxpayer identities and the confidentiality of tax information. In 2021, the Board published 9 redacted decisions, bringing the total of published Board decisions to 50. The Board's website for public reference: <http://www.maine.gov/boardoftaxappeals/decisions>.

The Board's website 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 lapsed. 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 2021, there were 7 appeals of a Board decision to the Superior Court, bringing the total number of appeals from Board decisions to 25 since the Board's inception in 2012. Of the appeals taken in 2021, 3 settled before the end of the year. During the year, there was one decision from the Superior Court on an appeal taken from the Board in which the Superior Court agreed with the Board in part. Further, during the year, the Maine Supreme Judicial Court issued one decision on a matter

originating at the Board. In that decision, the Court vacated the decision of the Superior Court and found in favor of MRS as the Board had done.

8. Direct Appeals of Non-Board 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.

9. Taxpayer Access to the Board

Taxpayers may appeal to the Board from an assessment, from the denial of a refund request, or from some other dispute with MRS. Taxpayers are notified of their right to appeal by language contained in MRS's Decision on Reconsideration. The Board also maintains a website at www.maine.gov/boardoftaxappeals that contains 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 has an email link on its website for public inquiries.

In previous years, the Board maintained an information booth at the annual Maine Tax Forum, a tax practitioner educational symposium held in Augusta for 2 days each November. However, since 2020, the Board has been unable to utilize this resource because the Forum has been held as a videoconference.

10. Staffing

Since its creation in 2012, the Board's staff has been steadily reduced. At the end of 2021, the Board staff consisted of the Acting Chief Appeals Officer, a vacant Appeals Officer and the part-time Board Clerk.

The Board experienced a staffing change in 2021 with the retirement of the Chief Appeals Officer, Paul Bourget, in September 2021 and the appointment of Derek Jones, (previously in the Appeals Officer position) as Acting Chief Appeals Officer.

11. Recommendations

In my previous position as Appeals Officer and my short tenure as Acting Chief Appeals Officer, I now have more experience with all components of this appeals process. Over this next year, I will continue to evaluate as I believe there are some changes that should be considered to the mandate and structure of the Board. For instance, De novo review of Board decisions by the Superior Court has, according to anecdotal evidence, caused practitioners to file directly with the Superior Court instead of utilizing the Board. I look forward to suggesting more detailed recommendations in an interim 2022 report or in next year's report.

Respectfully submitted,

Date: February 1, 2022

Derek A. Jones

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