



# 125th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2012

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Legislative Document

No. 1750

H.P. 1291

House of Representatives, January 9, 2012

### An Act To Create the Maine Board of Tax Appeals

(EMERGENCY)

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Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative KNIGHT of Livermore Falls.

1           **Emergency preamble. Whereas,** acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** the Independent Appeals Office, created in Public Law 2011, chapter 439,  
4 is to assume the responsibility of overseeing state tax appeals on July 1, 2012; and

5           **Whereas,** this Act eliminates the Independent Appeals Office and establishes the  
6 Maine Board of Tax Appeals in its place and, to comply with federal law, removes  
7 provisions that allow for the dissemination of confidential tax information; and

8           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
9 the meaning of the Constitution of Maine and require the following legislation as  
10 immediately necessary for the preservation of the public peace, health and safety; now,  
11 therefore,

12 **Be it enacted by the People of the State of Maine as follows:**

13           **Sec. 1. 5 MRSA §12004-B, sub-§10** is enacted to read:

14           **10.**

15           Maine Board of Tax Appeals                      \$100/Day                      36 MRSA §151-D

16           **Sec. 2. 36 MRSA §111, sub-§1-C** is enacted to read:

17           **1-C. Board.** "Board" means the Maine Board of Tax Appeals as established in Title  
18 5, section 12004-B, subsection 10.

19           **Sec. 3. 36 MRSA §151,** as amended by PL 2011, c. 380, Pt. J, §5 and repealed and  
20 replaced by c. 439, §2 and affected by §12, is repealed and the following enacted in its  
21 place:

22           **§151. Review of decisions of State Tax Assessor**

23           **1. Petition for reconsideration.** A person who is subject to an assessment by the  
24 State Tax Assessor or entitled by law to receive notice of a determination of the assessor  
25 and who is aggrieved as a result of that action may request in writing, within 60 days after  
26 receipt of notice of the assessment or the determination, reconsideration by the assessor  
27 of the assessment or the determination. If a person receives notice of an assessment and  
28 does not file a petition for reconsideration within the specified time period, a review is  
29 not available in Superior Court regardless of whether the taxpayer subsequently makes  
30 payment and requests a refund.

31           **2. Reconsideration by division.** If a petition for reconsideration is filed within the  
32 specified time period, the assessor shall reconsider the assessment or the determination as  
33 provided in this subsection.

1 A. Upon receipt by the assessor, all petitions for reconsideration must be forwarded  
2 for review and response to the division in the bureau from which the determination  
3 issued.

4 B. Within 90 days of receipt of the petition for reconsideration by the responding  
5 division, the division shall approve or deny, in whole or in part, the relief requested.  
6 Prior to rendering its decision and during the 90 days, the division may attempt to  
7 resolve issues with the petitioner through informal discussion and settlement  
8 negotiations with the objective of narrowing the issues for an appeals conference or  
9 court review, and may concede or settle individual issues based on the facts and the  
10 law, including the hazards of litigation. By mutual consent of the division and the  
11 petitioner, the 90 days may be extended for good cause, such as to allow further  
12 factual investigation or litigation of an issue by that or another taxpayer pending in  
13 court.

14 C. If the matter between the division and the petitioner is not resolved within the  
15 90-day period, and any extension thereof, the petitioner may consider the petition for  
16 reconsideration denied. The petitioner may not consider the petition for  
17 reconsideration denied after either the reconsidered decision has been received by the  
18 petitioner or the expiration of 9 years following the filing of the petition for  
19 reconsideration, whichever occurs first. A petition for reconsideration considered  
20 denied pursuant to this paragraph constitutes final agency action. A petitioner elects  
21 to consider the petition for reconsideration denied by:

22 (1) For a small claim request, filing a petition for review in Superior Court. For  
23 purposes of this subparagraph, "small claim request" has the same meaning as in  
24 paragraph E; or

25 (2) For all other requests:

26 (a) Filing a statement of appeal with the board; or

27 (b) Filing a petition for review in Superior Court.

28 D. A reconsideration by the division is not an adjudicatory proceeding within the  
29 meaning of that term in the Maine Administrative Procedure Act.

30 E. A reconsidered decision rendered on any request other than a small claim request  
31 constitutes the assessor's final determination, subject to review by either the board or  
32 the Superior Court. A reconsidered decision rendered on a small claim request  
33 constitutes the assessor's final determination and final agency action and is subject to  
34 review by the Superior Court in accordance with the Maine Administrative Procedure  
35 Act. For purposes of this paragraph, "small claim request" means a petition for  
36 reconsideration when:

37 (1) The amount of tax or refund request in controversy, exclusive of interest or  
38 penalty, is less than \$5,000;

39 (2) The only issue raised by the petition for reconsideration is waiver of interest  
40 or penalties; or

41 (3) The only issue raised by the petition for reconsideration is whether the  
42 request for refund or other requested relief is barred by the statute of limitations.

- 1           F. A person who wishes to appeal a reconsidered decision under this section:  
2                 (1) To the board must file a written statement of appeal with the board within 60  
3                 days after receipt of the reconsidered decision; or  
4                 (2) Directly to the Superior Court must file a petition for review in the Superior  
5                 Court within 60 days after receipt of the reconsidered decision.

6           If a person does not file a request for review with the board or the Superior Court  
7           within the time period specified in this paragraph, the reconsidered decision becomes  
8           final and no further review is available.

9           G. Upon receipt of a statement of appeal or petition for review filed by a person  
10           pursuant to paragraph F, the board or Superior Court shall conduct a de novo hearing  
11           and make a de novo determination of the merits of the case. The board or Superior  
12           Court shall enter those orders and decrees as the case may require. The burden of  
13           proof is on the person, except as otherwise provided by law.

14           **Sec. 4. 36 MRSA §151-B**, as enacted by PL 2011, c. 439, §3 and affected by §12,  
15           is repealed.

16           **Sec. 5. 36 MRSA §151-C, sub-§1**, as enacted by PL 2011, c. 439, §4 and  
17           affected by §12, is amended to read:

18           **1. Appointment.** The Commissioner of Administrative and Financial Services shall  
19           hire the taxpayer advocate as an employee of the bureau. The taxpayer advocate need not  
20           be an attorney.

21           **Sec. 6. 36 MRSA §151-D** is enacted to read:

22           **§151-D. Maine Board of Tax Appeals**

23           **1. Board established.** The Maine Board of Tax Appeals, established in Title 5,  
24           section 12004-B, subsection 10, is established as an independent board within the  
25           Department of Administrative and Financial Services and is not subject to the supervision  
26           or control of the bureau. The purpose of the board is to provide taxpayers with a fair  
27           system of resolving controversies with the bureau and to ensure due process.

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

34           **3. Qualifications.** The members of the board must be residents of this State and  
35           must be selected on the basis of their knowledge of and experience in taxation. A  
36           member of the board may not hold any elective office or any public office involving  
37           assessment of taxes or administration of any of the tax laws of this State. At least one  
38           member must be an attorney. No more than 2 members may be attorneys.

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

6           **5. Quorum.** Two members of the board constitute a quorum. A vacancy in the  
7 board does not impair the power of the remaining members to exercise all the powers of  
8 the board.

9           **6. Compensation.** A member of the board is entitled to a per diem of \$100. Board  
10 members receive reimbursement for their actual, necessary cash expenses while on  
11 official business of the board.

12           **7. Powers and duties.** The board has all powers as are necessary to carry out its  
13 functions. The board may be represented by legal counsel. The board may delegate any  
14 duties as necessary.

15           **8. Appeals office.** The board shall establish and maintain an office, referred to in  
16 this section as "the appeals office," in the City of Augusta to assist the board in carrying  
17 out the purposes of this section. The board may meet and conduct business at any place  
18 within the State.

19           **9. Chief Appeals Officer; appeals office.** The Commissioner of Administrative and  
20 Financial Services shall appoint the Chief Appeals Officer to assist the board and manage  
21 the appeals office. The Chief Appeals Officer must be a citizen of the United States and  
22 have substantial knowledge of tax law. The salary of the Chief Appeals Officer is within  
23 salary range 47. The Chief Appeals Officer shall:

24           **A.** Subject to policies and procedures established by the board, manage the work of  
25 the appeals office and hire personnel, including subordinate appeals officers and  
26 other professional, technical and support personnel;

27           **B.** Assist the board in the development and implementation of rules, policies and  
28 procedures to carry out the provisions of this section and section 151 and comply  
29 with all applicable laws;

30           **C.** Prepare a proposed biennial budget for the board, including supplemental budget  
31 requests as necessary, for submission to and approval by the Commissioner of  
32 Administrative and Financial Services;

33           **D.** Attend all board meetings and maintain proper records of all transactions of the  
34 board; and

35           **E.** Perform other duties as the board and the Commissioner of Administrative and  
36 Financial Services may assign.

37           **10. Appeals procedures.** Appeals of tax matters arising under this chapter are  
38 conducted in accordance with this subsection.

39           **A.** If requested by a petitioner in a statement of appeal, the appeals office shall hold  
40 an appeals conference to receive additional information and to hear arguments

1 regarding the protested assessment or determination. The board shall set a rate of no  
2 more than \$150 as a processing fee for each petition that proceeds to an appeals  
3 conference. These fees must be credited to a special revenue account to be used to  
4 defray expenses in carrying out this section. Any balance of these fees in the special  
5 revenue account does not lapse but is carried forward as a continuing account to be  
6 expended for the same purposes in the following years.

7 B. The appeals office shall provide a petitioner with at least 10 working days' notice  
8 of the date, time and place of an appeals conference. The appeals conference may be  
9 held with fewer than 10 working days' notice if a mutually convenient date, time and  
10 place can be arranged.

11 C. An appeals officer shall preside over an appeals conference. The appeals officer  
12 has the authority to administer oaths, take testimony, hold hearings, summon  
13 witnesses and subpoena records, files and documents the appeals officer considers  
14 necessary for carrying out the responsibilities of the board.

15 D. If a petitioner does not include a request for an appeals conference in the  
16 statement of appeal, the appeals officer shall determine the matter based on written  
17 submissions by the petitioner and the division within the bureau making the original  
18 determination.

19 E. Both a petitioner and the assessor may submit to the appeals officer, whether or  
20 not an appeals conference has been requested, written testimony in the form of an  
21 affidavit, documentary evidence and written legal argument and written factual  
22 argument. In addition, if an appeals conference is held, both the petitioner and the  
23 assessor may present oral testimony and oral legal argument. The appeals officer  
24 need not observe the rules of evidence observed by courts, but shall observe the rules  
25 of privilege recognized by law. If the appeals officer considers it appropriate, the  
26 appeals officer may encourage the petitioner and the assessor to resolve disputed  
27 issues through settlement or stipulation. The appeals officer may limit the issues to  
28 be heard or vary any procedure adopted for the conduct of the appeals conference if  
29 the parties agree to that limitation.

30 F. Except when otherwise provided by law, a petitioner has the burden of proving,  
31 by a preponderance of the evidence, that the assessor has erred in applying or  
32 interpreting the relevant law.

33 G. The appeals officer shall exercise independent judgment. The appeals officer  
34 may not have any ex parte communications with any party, including the petitioner,  
35 the assessor or any other employee of the Department of Administrative and  
36 Financial Services except those employees in the appeals office; however, the appeals  
37 officer may have ex parte communication limited to questions that involve ministerial  
38 or administrative matters that do not address the substance of the issues or position  
39 taken by the petitioner or the assessor.

40 H. The appeals officer shall prepare a recommended final decision on the appeal for  
41 consideration by the board based upon the evidence and argument presented to the  
42 appeals officer by parties to the proceeding. The decision must be in written form  
43 and must state findings of fact and conclusions of law. The appeals officer shall  
44 deliver copies of the recommended final decision to the board.

1 I. The board shall consider the recommended final decision on a timely basis. After  
2 considering the recommended final decision, the board may:

3 (1) Adopt the recommended final decision as delivered by the appeals officer;

4 (2) Modify the recommended final decision;

5 (3) Send the recommended final decision back to the same appeals officer, if  
6 possible, for the taking of further evidence, for additional consideration of issues,  
7 for reconsideration of the application of law or rules or for such other  
8 proceedings or considerations as the board may specify; or

9 (4) Reject the recommended final decision in whole or in part and decide the  
10 appeal itself on the basis of the existing record.

11 A decision adopted under this paragraph is the final administrative decision on the  
12 appeal and is subject to review by the Superior Court in accordance with the Maine  
13 Administrative Procedure Act.

14 Subject to any applicable requirements of the Maine Administrative Procedure Act, the  
15 board shall adopt rules to accomplish the purposes of this section. Those rules may  
16 define terms, prescribe forms and make suitable order of procedure to ensure the speedy,  
17 efficient, just and inexpensive disposition of all proceedings under this section. Rules  
18 adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter  
19 375, subchapter 2-A.

20 Beginning in 2014 and annually thereafter, the board shall prepare and submit a report by  
21 January 1st on the activities of the board to the Governor, the assessor and the joint  
22 standing committee of the Legislature having jurisdiction over taxation matters.

23 **Sec. 7. 36 MRSA §191, sub-§2, ¶C,** as enacted by PL 1977, c. 668, §2, is  
24 amended to read:

25 C. The inspection by the Attorney General of information filed by any taxpayer who  
26 has requested review of any tax under this Title or against whom an action or  
27 proceeding for collection of tax has been instituted; or the production in court or to  
28 the board on behalf of the State Tax Assessor or any other party to an action or  
29 proceeding under this Title of so much and no more of the information as is pertinent  
30 to the action or proceeding;

31 **Sec. 8. 36 MRSA §191, sub-§2, ¶UU,** as reallocated by RR 2011, c. 1, §52, is  
32 amended to read:

33 UU. The production in court on behalf of the assessor or any other party to an action  
34 or proceeding under this Title, or the production pursuant to a discovery request  
35 under the Maine Rules of Civil Procedure or a request under the freedom of access  
36 laws, of any reconsideration decision or ~~other document setting forth or discussing~~  
37 ~~the assessor's practice, interpretation of law or application of the law to particular~~  
38 ~~facts~~ advisory ruling issued on or after July 1, 2012, in redacted format so as not to  
39 reveal information from which the taxpayer may be identified, except that federal  
40 returns and federal return information provided to the State by the Internal Revenue  
41 Service may not be disclosed except as permitted by federal law. A person  
42 requesting the production of any such document shall pay, at the time the request is

1 made, all direct and indirect costs associated with the redacting of information from  
2 which the taxpayer or other interested party may be identified, plus an additional fee  
3 of \$100 per request; and

4 **Sec. 9. 36 MRSA §191, sub-§2, ¶VV**, as reallocated by RR 2011, c. 1, §53, is  
5 repealed.

6 **Sec. 10. 36 MRSA §191, sub-§2, ¶WW** is enacted to read:

7 WW. The disclosure of information by the assessor to the board and the subsequent  
8 inspection and disclosure of that information by the board, except that such disclosure  
9 is limited to information that is pertinent to an appeal or other action or proceeding  
10 before the board.

11 **Sec. 11. PL 2011, c. 439, §9** is repealed.

12 **Sec. 12. PL 2011, c. 439, §11** is amended to read:

13 **Sec. 11. Cost administration.** The Commissioner of Administrative and  
14 Financial Services, the State Tax Assessor and the ~~Chief Appeals Officer~~ Maine Board of  
15 Tax Appeals established pursuant to the Maine Revised Statutes, Title 36 5, section ~~451-~~  
16 ~~B 12004-B~~, subsection 2 10 shall manage the implementation of this Act to ensure that  
17 this Act is implemented within existing resources. The following principles govern costs  
18 associated with this Act.

19 1. The ~~Independent Appeals Office~~ Maine Board of Tax Appeals, the Chief Appeals  
20 Officer appointed pursuant to Title 36, section 151-D, subsection 9 and the appeals office  
21 established in Title 36, section 151-B 151-D may have no greater cost than the appellate  
22 division of the Department of Administrative and Financial Services, Bureau of Revenue  
23 Services prior to enactment of this Act ~~and all positions within the Independent Appeals~~  
24 ~~Office must have equivalent salary ranges as the positions in the appellate division prior~~  
25 ~~to enactment of this Act.~~ The Commissioner of Administrative and Financial Services  
26 shall take any steps necessary to ensure that the total costs associated with the  
27 ~~Independent Appeals Office~~ appeals office are no greater than the costs that would have  
28 been associated with the appellate division prior to enactment of this Act.

29 2. The funding associated with the current taxpayer advocate of the Department of  
30 Administrative and Financial Services, Bureau of Revenue Services must be used to fund  
31 the new taxpayer advocate hired by the Commissioner of Administrative and Financial  
32 Services and the new taxpayer advocate must have the same salary range as the current  
33 taxpayer advocate. The commissioner shall take any steps necessary to ensure that the  
34 costs associated with the new taxpayer advocate do not exceed the costs associated with  
35 the current taxpayer advocate prior to enactment of this Act.

36 3. ~~No additional positions within the Department of the Attorney General or the~~  
37 ~~Department of Administrative and Financial Services, Bureau of Revenue Services may~~  
38 ~~be created as a result of this Act.~~

39 **Sec. 13. PL 2011, c. 439, §12** is amended to read:

1           **Sec. 12. Effective date.** This Act takes effect July 1, 2012,~~except that the~~  
2 ~~Commissioner of Administrative and Financial Services is authorized to hire the Chief~~  
3 ~~Appeals Officer pursuant to the Maine Revised Statutes, Title 36, section 151-B and the~~  
4 ~~taxpayer advocate pursuant to Title 36, section 151-C prior to July 1, 2012 as long as~~  
5 ~~those appointments do not take effect until July 1, 2012.~~

6           **Sec. 14. Creation of Maine Board of Tax Appeals; elimination of**  
7 **appellate division; transition provisions.** The following provisions govern the  
8 elimination of the appellate division within the Department of Administrative and  
9 Financial Services, Bureau of Revenue Services and the creation of and the transfer of  
10 appeals cases to the Department of Administrative and Financial Services, Maine Board  
11 of Tax Appeals, established in the Maine Revised Statutes, Title 5, section 12004-B,  
12 subsection 10.

13           1. The Maine Board of Tax Appeals is established on July 1, 2012.

14           2. The Commissioner of Administrative and Financial Services shall appoint the  
15 Chief Appeals Officer under the Maine Revised Statutes, Title 36, section 151-D no later  
16 than November 1, 2012. The commissioner shall set the number of appeals officers and  
17 any other employees and rate of compensation in accordance with Public Law 2011,  
18 chapter 439, section 11 and direct the Chief Appeals Officer to fill those positions no  
19 latter than January 1, 2013.

20           3. The appellate division is eliminated on January 1, 2013, and all open cases of the  
21 appellate division must be transferred to the Maine Board of Tax Appeals. The Maine  
22 Board of Tax Appeals, the Bureau of Revenue Services and the Commissioner of  
23 Administrative and Financial Services shall develop a process to provide for the transition  
24 of cases in process by the appellate division on the date of its elimination.

25           4. All Other funds and Personal Services funds from the elimination of positions in  
26 the appellate division must be transferred to the Maine Board of Tax Appeals to carry out  
27 the provisions of this Act.

28           5. To the extent not inconsistent with the provisions of the Maine Revised Statutes,  
29 Title 36, section 151-D, all existing rules, regulations and procedures in effect, in  
30 operation or adopted in or by the appellate division are hereby declared in effect and  
31 continue in effect until rescinded, revised or amended by the Maine Board of Tax  
32 Appeals.

33           6. To the extent not inconsistent with the provisions of the Maine Revised Statutes,  
34 Title 36, section 151-D, all existing contracts, agreements and compacts currently in  
35 effect in the appellate division continue in effect.

36           7. All records, property and equipment previously belonging to or allocated for the  
37 use of the appellate division become the property of the Maine Board of Tax Appeals.

38           8. All existing forms, licenses, letterheads and similar items bearing the name of or  
39 referring to the appellate division may be used by the Maine Board of Tax Appeals until  
40 existing supplies of those items are exhausted.

