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2023 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 2023. 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, 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 2023	5
4. Cases Closed in 2023	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	9

1. Board History and Structure

The Maine Board of Tax Appeals 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 a speedy, just, and inexpensive resolution to the appeals filed with it. The Board consists of three Board members appointed by the Governor and confirmed by the Legislature. The Board is supported by an Appeals Office presently staffed by the Chief Appeals Officer, an Appeals Officer, and one Administrative Assistant.² Prior to creation of the Board, MRS conducted its own reviews of administrative tax controversies.

Where the amount in controversy is greater than or equal to \$1,000 but not greater than \$500,000³, 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

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 one of only eight states to receive an “A” in 2013 and one of only four states to receive an “A” in 2016.

² The Administrative Assistant is now shared between the Board of Tax Appeals and the State Civil Service Appeals Board. Previously, the Administrative Assistant was also shared with the State Board of Property Tax Review.

³ This jurisdictional limit was put in place this year by the Legislature in PL 2023 C. 412, Part M, with an effective date of October 25, 2023.

Where the amount in controversy is greater than \$500,000, taxpayers may appeal only to the Superior Court. 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 but not greater than \$500,000, 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. 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 appear before the Board at its meeting and may submit additional written statements 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 2023

There were nine tax disputes filed with the Board between January 1, 2023, and December 31, 2023, with a total monetary value in dispute of \$7,083,371.46. In two of the cases, individual taxpayers were self-represented. In five of the appeals (56%), the taxpayers requested to have informal conferences with the Appeals Officer and MRS.

The dollar amounts of the appeals filed in 2023 were as follows:

Less than \$5,000:	1	(11.1%)
\$5,000 - \$50,000:	2	(22.2%)
\$50,001 - \$100,000:	1	(11.1%)
\$100,001 - \$500,000:	2	(22.2%)
<u>More than \$500,000⁴:</u>	<u>3</u>	<u>(33.3%)</u>
Total	9	

The tax types of the appeals filed in 2023 were as follows:

Individual Income Tax:	3	(33.3%)
Corporate Income Tax:	5	(55.6%)
Sales/Use/Service Provider Tax:	0	(0%)
BETR/BETE:	0	(0%)
Healthcare Provider Tax.....	1	(11.1%)
<u>Estate Tax:</u>	<u>0</u>	<u>(0%)</u>
Total:	9	

4. Cases Closed in 2023

The Board closed fourteen appeals in 2023 (one filed in 2021, nine filed in 2022, and four filed in 2023), in the total dollar amount of \$2,287,601.44.⁵ The Board issued written decisions in seven of those cases (46.2%). A total of seven appeals were withdrawn by the taxpayers. The dollar amount of the cases decided by the Board was \$707,037.66 (31%).

⁴ See note 3.

⁵ In one case, the Board granted reconsideration.

Of the seven written decisions, all cases were decided wholly in favor of MRS (100%), and zero cases provided relief to the taxpayer.

The dollar amounts of the fourteen appeals closed in 2023 were as follows:

Less than \$5,000:	2	(14.3%)
\$5,000 - \$50,000:	6	(42.3%)
\$50,001 - \$100,000:	2	(14.3%)
\$100,001 - \$500,000:	3	(21.4%)
<u>More than \$500,000⁶:</u>	<u>1</u>	<u>(7.1%)</u>
Total	14	

The tax types of appeals closed by the Board in 2023 were as follows:

Individual Income Tax:	2	(14.3%)
Corporate Income Tax:	4	(28.6%)
Sales/Use/Service Provider Tax:	6	(42.3%)
Healthcare Provider Tax	1	(7.1%)
<u>Estate Tax:</u>	<u>1</u>	<u>(7.1%)</u>
Total:	14	

For cases closed by written decision of the Board in 2023, the average time between filing of the appeal and issuance of the decision was 462 days.⁷

5. Appeals Currently Pending Before the Board

There were six appeals pending before the Board at the end of 2023 totaling \$7,805,134.69. Of these six appeals, two were filed with the Board in 2022 and four were filed in 2023.⁸ Of the six cases pending before the Board, four have recommended decisions out for comment.

⁶ See note 3.

⁷ One case continued for 719 days.

⁸ One of the appeals filed in 2022 received three continuances due to the illness of the taxpayer.

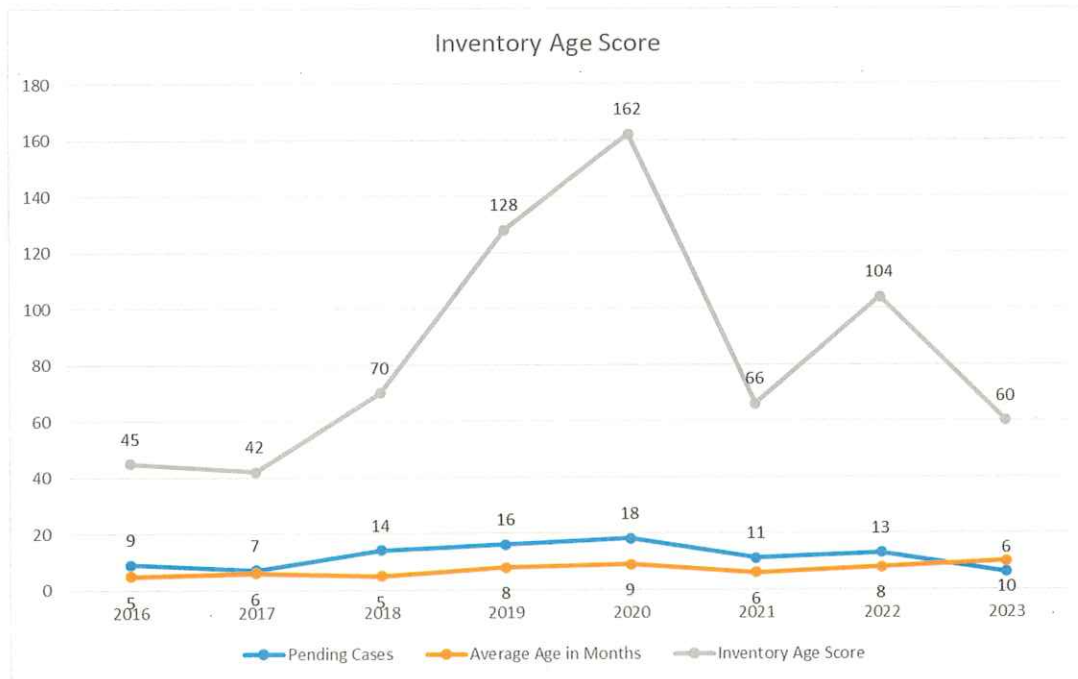
The dollar amounts of the pending appeals are as follows:

Less than \$5,000:	1	(16.7%)
\$5,000 - \$50,000:	1	(16.7%)
\$50,001 - \$100,000:	1	(16.7%)
\$100,001 - \$500,000:	0	(0%)
<u>More than \$500,000⁹:</u>	<u>3</u>	<u>(50%)</u>
Total	6	

The tax types of the pending cases are as follows:

Individual Income Tax:	2	(33.3%)
<u>Corporate Income Tax:</u>	<u>4</u>	<u>(66.7%)</u>
Total:	6	

The number of cases pending at the end of 2023, six, was less than in 2022. Furthermore, the average age of the pending appeals was 326 days (roughly ten months) resulting in an average inventory age score of 60.33, which is less than in 2022.¹⁰



⁹ See note 3.

¹⁰ The 2022 report erroneously reported the average inventory age for that year to be 140. It should have been 104.

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 2023, the Board published twelve redacted decisions to the Board's website: <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 court.

7. Superior Court Review of Board Decisions

Decisions of the Board are appealable to the Superior Court. In 2023, there was one appeal of a Board decision to the Superior Court, bringing the total number of appeals of Board decisions to twenty-eight since the Board's inception in 2012. Further, during the year, the Maine Supreme Judicial Court issued one decision on a matter originating at the Board: *Express Scripts Inc. et al. v. State Tax Assessor*, 2023 ME 68, ¶¶ 27, 31-35, ___ A.3d ___. Therein, the Law Court reached the same result as the Board.

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. That email is <https://www.maine.gov/boardoftaxappeals/contact.html>.

10. Staffing

Between its creation in 2012 and 2021, the Board's staff had been steadily reduced. In 2023, the Board staff consisted of the Chief Appeals Officer, an Appeals Officer, and a Board Clerk. In 2022, the Board Clerk's State Board of Property Tax Review (SBPTR) duties were transferred to a separate SBPTR position, allowing the Board Clerk to focus more time on Board efforts. Current staffing levels are sufficient for operation of the Appeals Office.

11. Recommendations

It is my recommendation that the structure and mandate of the Board be examined with input from Maine Revenue Services, practitioners, and the Board itself. Merger of the offices supporting the Board of Tax Appeals and the Board of Property Tax Review may provide cost savings and improve knowledge retention and efficiency for both.

This evaluation will be conducted by September 2024. Any determinations and recommendations will be presented by the Governor for the Legislature's consideration as part of the FY 26/27 biennial budget.

Respectfully submitted,

Date: January 11, 2024

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