

§151-D. Maine Board of Tax Appeals

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

[PL 2011, c. 694, §6 (NEW).]

2. Members; appointment. 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.

[PL 2011, c. 694, §6 (NEW).]

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

[PL 2011, c. 694, §6 (NEW).]

4. Terms. 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.

[PL 2011, c. 694, §6 (NEW).]

5. Quorum. 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.

[PL 2011, c. 694, §6 (NEW).]

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

[PL 2011, c. 694, §6 (NEW).]

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

[PL 2011, c. 694, §6 (NEW).]

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

[PL 2011, c. 694, §6 (NEW).]

9. Chief Appeals Officer; appeals office. The Commissioner of Administrative and Financial Services shall appoint the Chief Appeals Officer to assist the board and manage the appeals office. The Chief Appeals Officer must be a citizen of the United States and have substantial knowledge of tax law. The Chief Appeals Officer is an unclassified employee at salary range 33. The Chief Appeals Officer serves at the pleasure of the commissioner. The Chief Appeals Officer shall:

A. Subject to policies and procedures established by the board, manage the work of the appeals office and hire personnel, including subordinate appeals officers and other professional, technical and support personnel; [PL 2011, c. 694, §6 (NEW).]

- B. Assist the board in the development and implementation of rules, policies and procedures to carry out the provisions of this section and section 151 and comply with all applicable laws; [PL 2011, c. 694, §6 (NEW).]
 - C. Prepare a proposed biennial budget for the board, including supplemental budget requests as necessary, for submission to and approval by the Commissioner of Administrative and Financial Services; [PL 2011, c. 694, §6 (NEW).]
 - D. Attend all board meetings and maintain proper records of all transactions of the board; and [PL 2011, c. 694, §6 (NEW).]
 - E. Perform other duties as the board and the Commissioner of Administrative and Financial Services may assign. [PL 2011, c. 694, §6 (NEW).]
- [PL 2011, c. 694, §6 (NEW).]

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

- A. If requested by a petitioner within 20 days of filing a statement of appeal, the appeals office shall hold an appeals conference to receive additional information and to hear arguments regarding the protested assessment or determination. The board shall set a rate of no more than \$150 as a processing fee for each petition that proceeds to an appeals conference. These fees must be credited to a special revenue account to be used to defray expenses in carrying out this section. Any balance of these fees in the special revenue account does not lapse but is carried forward as a continuing account to be expended for the same purposes in the following years. [PL 2013, c. 331, Pt. B, §1 (AMD).]
- B. The appeals office shall provide a petitioner with at least 10 working days' notice of the date, time and place of an appeals conference. The appeals conference may be held with fewer than 10 working days' notice if a mutually convenient date, time and place can be arranged. [PL 2011, c. 694, §6 (NEW).]
- C. An appeals officer shall preside over an appeals conference. The appeals officer has the authority to administer oaths, take testimony, hold hearings, summon witnesses and subpoena records, files and documents the appeals officer considers necessary for carrying out the responsibilities of the board. [PL 2011, c. 694, §6 (NEW).]
- D. If a petitioner does not timely request an appeals conference, the appeals officer shall determine the matter based on written submissions by the petitioner and the division within the bureau making the original determination. [PL 2013, c. 331, Pt. B, §2 (AMD).]
- E. Both a petitioner and the assessor may submit to the appeals officer, whether or not an appeals conference has been requested, written testimony in the form of an affidavit, documentary evidence and written legal argument and written factual argument. In addition, if an appeals conference is held, both the petitioner and the assessor may present oral testimony and oral legal argument. The appeals officer need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law. If the appeals officer considers it appropriate, the appeals officer may encourage the petitioner and the assessor to resolve disputed issues through settlement or stipulation. The appeals officer may limit the issues to be heard or vary any procedure adopted for the conduct of the appeals conference if the parties agree to that limitation. [PL 2011, c. 694, §6 (NEW).]
- F. Except when otherwise provided by law, a petitioner has the burden of proving, by a preponderance of the evidence, that the assessor has erred in applying or interpreting the relevant law. [PL 2011, c. 694, §6 (NEW).]

G. The appeals officer shall exercise independent judgment. The appeals officer may not have any ex parte communications with or on behalf of any party, including the petitioner, the assessor or any other employee of the Department of Administrative and Financial Services except those employees in the appeals office; however, the appeals officer may have ex parte communication limited to questions that involve ministerial or administrative matters that do not address the substance of the issues or position taken by the petitioner or the assessor. [PL 2011, c. 694, §6 (NEW).]

H. The appeals officer shall prepare a recommended final decision on the appeal for consideration by the board based upon the evidence and argument presented to the appeals officer by parties to the proceeding. The decision must be in written form and must state findings of fact and conclusions of law. The appeals officer shall deliver copies of the recommended final decision to the board. [PL 2011, c. 694, §6 (NEW).]

I. The board shall consider the recommended final decision on a timely basis. The board may not have any ex parte communication with or on behalf of any party, including the petitioner, the assessor or any other employee of the Department of Administrative and Financial Services except those employees in the appeals office; however, the board may have ex parte communication limited to questions that involve ministerial or administrative matters that do not address the substance of the issue or position taken by the petitioner or assessor. After considering the recommended final decision, the board may:

- (1) Adopt the recommended final decision as delivered by the appeals officer;
- (2) Modify the recommended final decision;
- (3) Send the recommended final decision back to the same appeals officer, if possible, for the taking of further evidence, for additional consideration of issues, for reconsideration of the application of law or rules or for such other proceedings or considerations as the board may specify; or
- (4) Reject the recommended final decision in whole or in part and decide the appeal itself on the basis of the existing record.

A determination by the board is not an adjudicatory proceeding within the meaning of that term in the Maine Administrative Procedure Act. The decision, as adopted, modified or rejected by the board or appeals officer pursuant to this paragraph is the final administrative decision on the appeal and is subject to de novo review by the Superior Court. Either the taxpayer or the assessor may appeal the decision to the Superior Court and may raise on appeal in the Superior Court any facts, arguments or issues that relate to the final administrative decision, regardless of whether the facts, arguments or issues were raised during the proceeding being appealed, if the facts, arguments or issues are not barred by any other provision of law. The court shall make its own determination as to all questions of fact or law, regardless of whether the questions of fact or law were raised before the division within the bureau making the original determination or before the board. The burden of proof is on the taxpayer.

A person who wishes to appeal a decision adopted under this paragraph to the Superior Court must file a petition for review within 60 days after receipt of the board's decision. If a person does not file a request for review with the Superior Court within the time period specified in this paragraph, the decision becomes final and no further review is available. [PL 2011, c. 694, §6 (NEW).]

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

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

[PL 2013, c. 331, Pt. B, §§1, 2 (AMD).]

SECTION HISTORY

PL 2011, c. 694, §6 (NEW). PL 2013, c. 331, Pt. B, §§1, 2 (AMD).

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