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Date: (Filing No. H- )

**TAXATION**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
125TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1291, L.D. 1750, Bill, “An Act To Create the Maine Board of Tax Appeals”

Amend the bill in section 3 in §151 in subsection 1 in the 7th line (page 1, line 29 in L.D.) by inserting after the following: "Court" the following: 'or before the board'

Amend the bill in section 3 in §151 in subsection 2 in paragraph C in the last line (page 2, line 21 in L.D.) by inserting after the following: "denied" the following: 'pursuant to this paragraph'

Amend the bill in section 3 in §151 in subsection 2 by striking out all of paragraph E (page 2, lines 30 to 42 in L.D.) and inserting the following:

'E. A reconsidered decision rendered on any request other than a small claim request constitutes the assessor's final determination, subject to review by either the board or directly by the Superior Court. A reconsidered decision rendered on a small claim request constitutes the assessor's final determination and final agency action and is subject to de novo review by the Superior Court. For purposes of this paragraph, "small claim request" means a petition for reconsideration when the amount of tax or refund request in controversy is less than \$5,000.'

Amend the bill in section 3 in §151 in subsection 2 in paragraph F in subparagraph (1) in the first line (page 3, line 2 in L.D.) by inserting after the following: "To the board" the following: ', beginning November 1, 2012.'

Amend the bill in section 6 in §151-D in subsection 9 in the first paragraph by striking out all of the last 2 underlined sentences (page 4, lines 22 and 23 in L.D.) and inserting the following: '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.'

Amend the bill in section 6 in §151-D in subsection 10 in the first paragraph by striking out all of the first underlined sentence (page 4, lines 37 and 38 in L.D.) and inserting the following: 'Beginning January 1, 2013, appeals to the board must be conducted in accordance with this subsection.'

**COMMITTEE AMENDMENT**

1 Amend the bill in section 6 in §151-D in subsection 10 in paragraph G in the 2nd line  
2 (page 5, line 34 in L.D.) by inserting after the following: "with" the following: 'or on  
3 behalf of'

4 Amend the bill in section 6 in §151-D in subsection 10 by striking out all of  
5 paragraph I (page 6, lines 1 to 13 in L.D.) and inserting the following:

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

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

15 (2) Modify the recommended final decision;

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

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

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

35 A person who wishes to appeal a decision adopted under this paragraph to the  
36 Superior Court must file a petition for review within 60 days after receipt of the  
37 board's decision. If a person does not file a request for review with the Superior  
38 Court within the time period specified in this paragraph, the decision becomes final  
39 and no further review is available.'

40 Amend the bill by striking out all of section 14 and inserting the following:

41 **'Sec. 14. Creation of Maine Board of Tax Appeals; elimination of**  
42 **appellate division; transition provisions.** The following provisions govern the

1 elimination of the appellate division within the Department of Administrative and  
2 Financial Services, Bureau of Revenue Services and the creation of the Department of  
3 Administrative and Financial Services, Maine Board of Tax Appeals, established in the  
4 Maine Revised Statutes, Title 5, section 12004-B, subsection 10.

5 1. The appellate division is eliminated and the Maine Board of Tax Appeals is  
6 established on July 1, 2012.

7 2. The Commissioner of Administrative and Financial Services shall appoint the  
8 Chief Appeals Officer under the Maine Revised Statutes, Title 36, section 151-D no later  
9 than July 1, 2012.

10 3. Three authorized positions and any incumbent personnel in the appellate division  
11 are transferred to the Maine Board of Tax Appeals. These employees retain all the  
12 employee rights, privileges and benefits, including sick leave, vacation leave and  
13 seniority, provided under the Civil Service Law, collective bargaining agreements and  
14 current state personnel policies.

15 4. All property and equipment previously belonging to or allocated for the use of the  
16 appellate division become the property of the Maine Board of Tax Appeals.

17 5. Any funds appropriated for use by the appellate division must be transferred to the  
18 Maine Board of Tax Appeals.'

19 Amend the bill by inserting after section 15 the following:

20 '**Sec. 16. Appropriations and allocations.** The following appropriations and  
21 allocations are made.

22 **ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF**

23 **Maine Board of Tax Appeals N135**

24 Initiative: Provides appropriations to fund the Personal Services and related All Other  
25 costs of 2 Staff Attorney positions, one Office Associate II position and one Chief  
26 Appeals Officer position at the newly created Maine Board of Tax Appeals within the  
27 Department of Administrative and Financial Services.

28	<b>GENERAL FUND</b>	<b>2011-12</b>	<b>2012-13</b>
29	POSITIONS - LEGISLATIVE COUNT	0.000	4.000
30	Personal Services	\$0	\$353,871
31	All Other	\$0	\$67,912
32			
33	GENERAL FUND TOTAL	<u>\$0</u>	<u>\$421,783</u>

34 **Maine Board of Tax Appeals N135**

35 Initiative: Provides an allocation to establish an operating account to receive fines  
36 imposed by the Maine Board of Tax Appeals to be used to support the expenses of the  
37 board.

1	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2011-12</b>	<b>2012-13</b>
2	All Other	\$0	\$45,000
3			
4	<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<u>\$0</u>	<u>\$45,000</u>

5 **Revenue Services - Bureau of 0002**

6 Initiative: Eliminates appropriations for the Personal Services and related All Other costs  
 7 of 2 Staff Attorney positions, one Office Associate II position and one Public Service  
 8 Manager II position due to the elimination of the Independent Appeals Office within the  
 9 Department of Administrative and Financial Services, Bureau of Revenue Services.

10	<b>GENERAL FUND</b>	<b>2011-12</b>	<b>2012-13</b>
11	POSITIONS - LEGISLATIVE COUNT	0.000	(4.000)
12	Personal Services	\$0	(\$353,871)
13	All Other	\$0	(\$67,912)
14			
15	<b>GENERAL FUND TOTAL</b>	<u>\$0</u>	<u>(\$421,783)</u>

16 **ADMINISTRATIVE AND FINANCIAL**  
 17 **SERVICES, DEPARTMENT OF**  
 18 **DEPARTMENT TOTALS**

19		<b>2011-12</b>	<b>2012-13</b>
20	<b>GENERAL FUND</b>	<b>\$0</b>	<b>\$0</b>
21	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$0</b>	<b>\$45,000</b>
22			
23	<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<u><b>\$0</b></u>	<u><b>\$45,000</b></u>
24			

25 Amend the bill by relettering or renumbering any nonconsecutive Part letter or  
 26 section number to read consecutively.

27 **SUMMARY**

28 This amendment, which is the majority report, makes the review by the Superior  
 29 Court of a final determination by the State Tax Assessor or the Department of  
 30 Administrative and Financial Services, Maine Board of Tax Appeals a de novo review. It  
 31 provides that the Chief Appeals Officer serves at the pleasure of the Commissioner of  
 32 Administrative and Financial Services and is a confidential employee at salary range 33.  
 33 It clarifies that the board may not have any ex parte communication with or on behalf of  
 34 any party, but may have such communication related to administrative matters. It  
 35 provides that either the taxpayer or the assessor may appeal a decision to the Superior  
 36 Court. It provides that a person who wishes to appeal the board’s decision to the Superior  
 37 Court must file a petition for review within 60 days after receipt of the board’s decision  
 38 or the decision becomes final and no further review is available. It provides that the board  
 39 begins to receive appeals on November 1, 2012 and begins to consider appeals on

1 January 1, 2013. It eliminates provisions related to the transfer of cases between the  
2 eliminated appellate division within the Department of Administrative and Financial  
3 Services, Bureau of Revenue Services and the Maine Board of Tax Appeals, the  
4 continuation of rules, regulations, procedures and contracts and the use of related forms,  
5 licenses, letterheads and similar items. The amendment provides for the transfer of  
6 positions from the eliminated appellate division to the Maine Board of Tax Appeals and  
7 includes an appropriations and allocations section.

8 **FISCAL NOTE REQUIRED**

9 **(See attached)**