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Maine Court Clarifies Jurisdiction in Certain Property Tax Appeals and Addresses Maine Revenue Services' Duty to Taxpayers When Changing Policy

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In a unanimous opinion, Maine Law Court relied on the plain language of 36 M.R.S. § 844 to hold that, in a municipality without a board of assessment review (BAR), a taxpayer whose nonresidential property is valued at $1 million or more has the option to appeal an assessment either to the county commissioners or to the State Board of Property Tax Review. *Cassidy Holdings, LLC v. Aroostook County Commissioners*, 2023 ME 69.

The Law. 36 M.R.S. § 844 governs Maine property tax abatement appeals where the municipality has not adopted a BAR. Section 844(1) authorizes the county commissioners to hear the appeal. Section 844(2) states that, "notwithstanding" subsection (1), a taxpayer whose nonresidential property's municipal equalized valuation is at least $1 million "may" appeal to the State Board.

The Facts. The taxpayer owned nonresidential property in the city of Caribou that was assessed at $1 million or more in the 2021 tax year. The city's board of assessors denied the taxpayer's request for abatement, and because the city had not adopted a BAR, the taxpayer appealed the denial to the Aroostook County Commissioners pursuant to section 844. The Commissioners, however, declined to hear the appeal, concluding that the State Board had exclusive subject matter jurisdiction over the appeal under section 844. The taxpayer appealed to the Superior Court, which concluded that the Commissioners did

have jurisdiction, and the Commissioners filed an interlocutory appeal to the Law Court.

The Takeaways.

1. The Law Court's decision resolved the jurisdictional point of confusion. For years, some practitioners and taxpayers understood section 844 to grant the State Board exclusive jurisdiction over property tax appeals for nonresidential properties valued at $1 million or more, while others believed that the county commissioners retained concurrent jurisdiction. It is now clear that any taxpayer with property located in a municipality without a BAR can appeal their property tax assessment to the county commissioners, regardless of its equalized municipal valuation.
2. The Court's plain meaning analysis affirmed that the word "may" is permissive and cannot be interpreted to mean "shall" or "must." Taxpayers making plain language arguments should note the Court's reliance on Maine statutory rules of construction (M.R.S. tit. 1, ch. 3), on dictionary definitions, and on the Maine Legislative Drafting Manual.

3. In dicta, the Court stressed that, while Maine Revenue Services (MRS) "is free to change its mind in its interpretation of a statute," the agency has an obligation to "acknowledge that it is making a change, explain why, and give due consideration to the serious reliance interests on the old policy." The policy at issue was Property Tax Bulletin No. 10, "Property Tax Abatement and Appeal Procedures." The version of the Bulletin in effect before December 15, 2022 acknowledged the county commissioners' concurrent jurisdiction: "If a municipality does not have a local BAR, appeals [involving nonresidential property valued at $1 million or more] go directly to the county commissioners or the [State Board]." On December 15, 2022, just days after the trial court issued its decision in *Cassidy*, MRS revised the Bulletin to state that such appeals go to the State Board, without mention of the county commissioners.

   The Court pointed out that MRS "did not acknowledge that it was changing its position; did not explain why it was doing so; and, given this lacuna in explanation, did not indicate that it had reflected upon any relevant reliance interests."

   Although the Law Court did not reference it, 36 M.R.S. § 112(1) already

requires MRS to provide 60 days published, written notice of any "significant change" to MRS "policy or practice or in the interpretation by [MRS] of any law, rule or instruction bulletin."

Notably, just last year, the Law Court held that the plain language of section 112(1) "provides neither any defense for those who have been affected by [MRS's] actions (or lack thereof) nor any consequence for [MRS] should it fail to comply," and directed aggrieved taxpayers to seek a court order requiring MRS to act. *State Tax Assessor v. TracFone Wireless, Inc.*, 2022 ME 36, ¶ 25. It is therefore unclear what, if any, recourse exists for taxpayers whose reliance interests are negatively impacted by changes to MRS policies made without notice or explanation.

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