

STATE OF MAINE  
KENNEBEC, ss.

BOARD OF PROPERTY TAX REVIEW  
DOCKET NOS. 2009-020 & -021

WILLIAM HUNT, TRUSTEE,  
HUNT FAMILY IRREVOCABLE TRUST,

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

This appeal raises questions of first impression for the Board. The substantive question is whether an owner of properties enrolled in tree growth in the Unorganized Territory whose lands were involuntary removed from tree growth and who paid, by supplemental assessments, statutorily-mandated penalties is entitled to receive interest on the amounts it paid when Respondent Maine Revenue Services (MRS), by legislative directive, returned those amounts to the taxpayer. That question, however, is secondary to the question whether the Board has jurisdiction to decide it. The Board holds that while we have jurisdiction to decide the substantive question, the taxpayer is not entitled to receive interest on the repayment of the penalties assessed. Given this conclusion, there is no need to reach a third question raised by the Trust, on which the parties disagree—whether MRS had wrongfully withdrawn the Trust's lands from tree growth and, consequently, had wrongfully assessed penalties—because the Legislature has short-circuited the usual abatement process that could provide repayment of taxes with interest.

## I. BACKGROUND

The Tree Growth Tax Law, 36 M.R.S. §§ 571-584-A, was enacted in 1971. P.L. 1971, ch. 616, § 8. Maine has taxed property in its unorganized areas since its beginning as a state. *Pejepscot Paper Co. v. State*, 134 Me. 238, 242, 184 A. 764, 766 (1936). The State Tax Assessor, through the Property Tax Division of MRS, administers the assessment, and so taxation, of properties in the Unorganized Territory, including those enrolled in tree growth. *E.g.*, 36 M.R.S. §§ 111(1), 208, 302, 574-B(1)-(3), 576, 581-B, 1181.

Since 1989, *see* P.L. 1989, ch. 555, § 16; P.L. 1989, ch. 637, § 4, the Tree Growth Tax Law has provided two reporting preconditions to enrollment. First, “[a] forest management and harvest plan must be prepared for each parcel and updated every 10 years,” and “[t]he landowner shall file a sworn statement . . . with the State Tax Assessor . . . that a forest management and harvest plan has been prepared . . . .” 36 M.R.S § 574-B(1). Second, a “landowner . . . must submit, every 10 years . . . a statement from a licensed professional forester that the landowner is managing the parcel according to schedules in the plan required under subsection 1.” *Id.* § 574-B(2). Failure to meet either of these requirements results in the involuntary withdrawal of the property from tree growth. *Id.* § 581(1).<sup>1</sup>

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<sup>1</sup> Originally, assessors under section 581(1) had the discretion to withdraw property when a property owner did not comply with section 574-B. This discretion was removed in 1991 by P.L 1991, ch. 546, § 8, making it “incumbent upon assessors to impose penalty assessments when land was withdrawn from tree growth . . . , whether the withdrawal was inadvertent or unintentional, or not.” *See Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 9-11 (BPTR Sept. 1, 2009).

For many years the Tree Growth Tax Law did not require a municipal assessor or the State Tax Assessor to notify the taxpayer before withdrawing land from tree growth. The Board has commented on the potential harshness of involuntary withdrawals by recognizing, even while applying the law as it stood, that the Legislature could, through a notice regime, ameliorate unfortunate consequences that have befallen taxpayers who made inadvertent or unintentional mistakes but did not mean to take their land out of tree growth. See *Pierce v. Maine Revenue Services*, No. 2006-007, at 7, 8 (BPTR Feb. 13, 2007); *Pachowsky v. Town of Clinton*, No. 2001-005, at 6, 10 n.6 (BPTR Feb. 19, 2002).

The Legislature first required notice in 2007 and 2008 by amending 36 M.R.S. § 581(1), which “changed the rules of the game.” *Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 11-12, 14 (Sept. 1, 2009). In 2009, the year relevant to the present case, section 581(1) provided in pertinent part that

[b]efore withdrawing a parcel from taxation under [the Tree Growth Tax Law], if the sole reason the land does not meet the requirements of [the Tree Growth Tax Law] is that the owner failed to file the sworn statement required under section 574-B, the assessor shall provide the owner with written notice by regular mail of the deadline to file the sworn statement and permit the owner at least 60 days to respond to that notice.

Because of concerns that this notice provision was being inconsistently applied and more narrowly interpreted by MRS than the Legislature intended, leading to unfairness in the administration of the tree growth program, the Joint

Standing Committee on Taxation of the 124<sup>th</sup> Legislature considered numerous proposals to amend the notice provision. Petitioner Hunt Family Irrevocable Trust was one of the leading proponents of change. (See generally Jt. Exs. B, G.)

The result was that the Legislature enacted, by P.L. 2009, ch. 577, "An Act to Avoid Unnecessary Removal of Land from the Maine Tree Growth Tax Law Program," effective July 12, 2010. (Jt. Ex. H.) The Act first amended what a taxing authority must do before withdrawing land from tree growth. Section 1 of the Act repealed the 60-day notice provision of 36 M.R.S. § 581(1). In its place, section 2, which became *id.* § 581(1-A), amended the notice provision to require that an assessor give written notice to the taxpayer "[n]o earlier than 185 days prior to a deadline established by section 574-B" that property would be withdrawn from tree growth "if the landowner has not yet complied with the requirements of that section," and "[i]f the notice is issued less than 120 days before the deadline, the owner has 120 days from the date of the notice to provide the assessor with the documentation to achieve compliance with section 574-B . . . ."

That section is not in issue here. But by P.L. 2009, ch. 577, § 3, the Legislature next provided considerable relief to certain taxpayers. This section provides:

**Sec. 3. Relief from withdrawal and penalties.**

The State Tax Assessor shall waive penalties assessed and refund penalties paid with regard to any parcel of land in the unorganized territory that was withdrawn from taxation under the Maine Tree Growth Tax Law between September 20, 2007 and July 10, 2010 and

return that land to classification under the Maine Tree Growth Tax Law if the landowner demonstrates the parcel is in compliance with all requirements of the Maine Revised Statutes, Title 36, section 574B before April 1, 2011.<sup>2</sup>

The meaning of this section of the 2009 Act, and particularly of the phrase “waive penalties assessed and refund penalties paid,” is at the heart of the present appeal. The legislative history of section 3 is entirely silent on whether interest is required. The Trust concedes that section 3, by its terms, neither creates nor extinguishes a right to interest, but argues that Maine law otherwise provides for interest to be paid, while MRS posits that the Legislature intended to refund only what a taxpayer paid in penalties. From these different positions, both parties suggest that we should engage in various modes of analysis to give meaning to the statute.

The subject properties owned by the Trust, designated as Map 32, Plan 05, Lot 9 10 43 48 (Docket No. 2009-020) and as Map 32, Plan 05, Lot 49 50 (Docket No. 2009-021), are located in the Unorganized Territory in Trescott Township, Washington County. Maine Revenue Services administers taxation of these properties. The Trust in 1977 enrolled the properties in tree growth, where they remained continuously into 2009.

In March 1999 the Trust had submitted to MRS a sworn statement that it was following the provisions of a forest management and harvest plan

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<sup>2</sup> Presumably because of its transient nature, section 3 was an unallocated section of the Act, meaning that the Revisor of Statutes did not assign it a title and section number in the Maine Revised Statutes. See *Dale Henderson Logging*, No. 2008-016, at 13.

previously prepared by a licensed professional forester. (Jt. Exs. 3B, 3D.) In December 2008—*before* the deadline for compliance with 36 M.R.S. § 574-B—MRS advised the Trust that it had until the end of March 2009 to comply with section 574-B. (Jt. Exs. 1, 2.) Only after that, on April 24, 2009, did the Trust file the statements required by section 574-B(1) and (2). (Jt. Exs. 3A, 3C.)

Accordingly, on April 27, 2009, MRS withdrew the properties from tree growth and by supplemental assessments, *see id.* §§ 581(4), 581-B, 713-B, imposed penalties totaling \$65,306.80 (\$65,084.40 + \$222.40). (Jt. Ex. 4.) While not challenging either the initial current use assessments or the accuracy of the amount of the penalties, the Trust believed that the penalties were wrongfully imposed because MRS had not complied with *id.* §581(1) then in effect by not giving it 60 days, *after* a new plan was due, to file the required statements. (Jt. Exs. 5, 7.) The Trust, although not required by law to do so, *see Curtis v. Town of Sherman*, No. 2004-005, at 3 n.1 (BPTR Jan. 15, 2005) (Order on Jurisdiction) (noting repeal of 36 M.R.S. 582-A in 1997 that previously had mandated, when taxes were not paid, the suspension of an appeal contesting the withdrawal of property from tree growth), paid the penalties under protest in order to avoid having interest for nonpayment added, as MRS had warned would occur.<sup>3</sup> The Trust applied for an abatement

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<sup>3</sup> Maine Revenue Services wrote Petitioner Hunt that “[i]f you were to lose all abatement requests and appeals, any interest accruing in the interim will also be due. Initiating an abatement request does not stop interest from accruing if you ultimately don’t prevail in overturning these withdrawal penalties.” (Jt. Ex. 9.)

of the penalties, which MRS denied, and then timely appealed that denial to the Board. (Jt. Exs. 8-12.)

While the appeal was pending, the Legislature enacted the Act to Avoid Unnecessary Removal of Land from the Maine Tree Growth Tax Law Program, P.L. 2009, ch. 577, including, of course, its unallocated section 3. The Trust's penalties accounted for about a quarter of the previously paid penalties, \$244,162.40 in all, affected by the Act. As noted, the Act became effective July 12, 2010. The trust had paid the supplemental assessments on June 28, 2009, their due date. Maine Revenue Services returned to the amount paid as penalties, \$65,306.80, on July 15, 2010. (Jt. Ex. 16.) The Trust contends that interest for the 54-week period that MRS held the Trust's money should have been paid in addition to the amount of the penalties it had paid and MRS returned. The parties estimate the interest on the penalties to be \$6366.94.

As the appeal, in its prehearing stages, appeared to focus substantially on questions of law only, the Board urged the parties to stipulate to the facts and to present exhibits jointly or without objection. The parties agreed and, with the Board's appreciation and thanks, have provided stipulations of facts and joint exhibits. The Board heard argument on September 13, 2011. Jonathan A. Pottle, Esq. and Timothy C. Woodcock, Esq. represented the Hunt Family Trust; Scott W. Boak, Esq. represented Maine Revenue Services. The panel hearing the appeal consisted of Board Members Allan L. Smith, Earl G. Sherwood, and Lowell Sherwood, and Chairman Eric E. Wright.

Each party articulated well and fully several arguments on the meaning of unallocated section 3. Following public deliberation, the Board first determined by a 3-1 vote, with Mr. Earl Sherwood dissenting, that it has jurisdiction over this appeal. After further arguments and deliberation, we next determined, again by a 3-1 vote, with Mr. Smith dissenting, that the Trust was in fact not entitled to recover interest when Maine Revenue Services repaid the supplement assessments.

## II. THE BOARD'S JURISDICTION

This appeal arises as the result of legislation, P.L. 2009, ch. 577, § 3, designed explicitly to give relief to certain, clearly defined tree growth property owners—those in the Unorganized Territory whose land had been withdrawn from tree growth and who were assessed tax penalties between September 20, 2007, and July 1, 2010—without regard to the correctness of the withdrawal. The Trust is within the class chosen as the beneficiary of the statute. In many cases before the Board, the petition for assessment review and the taxing authority's response, along with the information sheets, together will demonstrate that the Board has jurisdiction. Where they do not, however, it is the burden of the petitioner to affirmatively prove its case is within the Board's jurisdiction. *Smith v. Town of Livermore Falls*, No. 2010-008, at 6 (BPTR Sept. 29, 2010) (Order on Jurisdiction).

Most cases involving jurisdictional questions raise factual issues, such as whether an appeal was timely filed. By comparison, our decision in the present case requires the Board to address only questions of law. The Trust's

primary argument in favor of jurisdiction is that the Board has plenary authority, among its “powers and duties,” to “[h]ear and determine” tree growth appeals. 36 M.R. S. § 271(2)(A)(1). The Trust’s point addresses two forms of jurisdiction: subject matter jurisdiction and the scope of our statutory authority. See *Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 54 (BPTR Nov. 14, 2000).

Maine Revenue Services counters that P.L. 2009, ch. 577, § 3 is *related* to the Tree Growth Tax Law, but is *not a part of it*. This argument is overly formalistic. After all, section 1 of P.L. 2009, ch. 577 eliminated a previous provision of the tree growth law, and section 2 directly put into the tree growth law a new notice provision to replace what section 1 eliminated. See p. 4 above. Those provisions immediately became integral to the operation of the current Tree Growth Tax Law; so too did section 3, at least in passing. The mere fact that the Revisor of Statutes decided that section 3, because of its ephemeral nature, need not have been codified in the Revised Statutes when its usefulness would soon be (as it already is now) only of historical importance is hardly a conclusive reason to deny jurisdiction.

At the same time, however, it may be said that simply because the Board has the sole authority to entertain appeals from taxing authorities in tree growth cases, see 36 M.R.S. § 583, does not *ipso facto* mean the Board has jurisdiction in this case. The Board always has a duty to inquire into its jurisdiction. *Rangeley Lake Resort Development Co., LLC v. Town of Rangeley*, No. 2003-019, at 11 (BPTR Feb. 7, 2005); *Dirigo Dowels & Pins, Inc. v. Town of*

*New Portland*, No. 2000-007, at 12 (Apr. 11, 2002). There may be countervailing considerations—mootness, lack of standing, a failure to meet a mandatory filing date, evidence that a parcel is too small to qualify—that will deprive the Board of its authority to hear the merits of a tree growth case.<sup>4</sup>

Maine Revenue Services argues that the Board has no jurisdiction because it has authority to entertain only appeals seeking abatements, *citing* 36 M.R.S. §§ 583, 841 and Board Rule 1(A), which it says is not the case here. But it is incorrect to say the Trust did not seek an abatement. Quite apart from the question whether P.L. 2009, ch. 577, ch. 3 involves an abatement of the penalties paid by the Trust, the Trust's petitions for assessment review, as well as the third of the three questions it proposed to have the Board address by the stipulated facts, plainly raise the legitimacy of MRS's withdrawal of its lands from tree growth. More specifically, the Trust has contended that MRS did not provide proper notice of its intention to withdraw the lands from tree growth and so did not give the Trust the opportunity, to which it was entitled, to rectify any filing deficiency. As such, the Trust maintains, the penalties

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<sup>4</sup> Of these examples, mootness does arise as a possible issue in this case. Maine Revenue Services argues that the effect of P.L. 2009, ch. 577, § 3 was to negate any dispute over the correctness *vel non* of its withdrawing the Trust's properties from tree growth and thus of fact or amount of the underlying penalties. Thus, MRS argues, the Board lost the jurisdiction it once had, and the appeal now is moot. Maine Revenue Services is of course correct that the passage of legislation during litigation may render the litigation moot. *E.g.*, *Berry v. Daigle*, 322 A.2d 320, 328 (Me. 1974). But it is erroneous to say that the passage of section 3 necessarily means any issue over the correctness of tree growth withdrawal and penalties cannot now exist. As we noted at the outset, *see* pp. 1, 6 above, the Trust *does* contest those issues. Accordingly, the appeal is not moot because the Board could, as we explain above, provide specific and practical relief, thus making this a real, substantial, and live controversy. *See, e.g.*, *Anthem Health Plans of Me., Inc. v. Supt. of Ins.*, 2011 ME 48, ¶ 5, 18 A.3d 824, 826; *Gordon v. Cummings*, 2000 ME 68, ¶ 10, 756 A.2d 942, 944.

were illegally imposed. Although we do not reach this point, whether the Trust ever should have been issued penalties is indisputably an abatement issue.

Maine Revenue Services also submits that nothing in 36 M.R.S. § 271(2) gives the Board the authority to order interest on refunds of tax penalties imposed by supplemental assessment or, as regards section 271 generally, to determine interest in conjunction with our power to “[r]aise or lower assessments.” *Id.* § 271(2)(B). *See id.* §§ 843(1-A), 844(2) (“If the [Board of Property Tax Review] thinks that the applicant is over-assessed, it shall grant such reasonable abatement as the board thinks proper”). Maine Revenue Services’ view does not fully capture the concept of a “tax.”

By various statutory provisions, a tax includes any interest due. The very definition of a “tax” is “the total amount required to be paid . . . with respect to . . . actual tax liability,” including “any interest or penalties provided by law” and “any . . . penalty . . . owed to the State provided for by law if that . . . penalty . . . is subject to collection by the assessor pursuant to statute . . . .” 36 M.R.S. § 111(5). Consistent with this, when one’s taxes are overdue, “interest must be added to and become part of . . . taxes [that are overdue].” *Id.* § 505(4).<sup>5</sup>

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<sup>5</sup> Although section 505(4)—and several other sections to be mentioned presently in the text—are contained in Chapter 105 of Title 36, which concerns cities and towns, and not by definition the Unorganized Territory, so too is the Tree Growth Tax Law a part of chapter 105, and several of its provisions address the powers and duties of the State Tax Assessor. Accordingly, where a provision of chapter 105 may be pertinent to the State Tax Assessor’s authority under the Tree Growth Tax Law, we apply it with full force to that office unless the provision clearly states, or context suggests, otherwise.

The Trust also points to statutory provisions that highlight what is in contention here—penalties imposed by supplemental assessments. 36 M.R.S. § 713 provides for supplemental assessments of properties omitted by assessors “through error or inadvertence,” and it addresses the accrual of interest “on all unpaid balances of any supplemental tax . . . .” *Id.* § 713-B provides that “[p]enalties imposed under [the Tree Growth Tax Law] may be assessed as supplemental assessments,” a point cross-referenced by the Tree Growth Tax Law itself. 36 M.R.S. § 581(4). Finally, section 581-B provides explicit authority for the State Tax Assessor to issue supplemental assessments in tree growth cases.

The Trust’s fundamental position is that the command of P.L. 2009, ch. 577, § 3 that MRS refund the penalties paid means the Trust overpaid its taxes and that an overpayment of taxes must be returned with interest. It notes that the common law of Maine dictated that when a tax was paid under protest and later found to have been wrongfully imposed, the taxpayer was entitled to interest on a tax refund, *citing Howard v. City of Augusta*, 74 Me. 79, 84-85 (1882); *Abbott v. Inhabitants of Bangor*, 56 Me. 310, 313-15 (1868). This principle survives by statute in modern times. 36 M.R.S. § 506-A provides that “a taxpayer who pays an amount in excess of that finally assessed must be repaid the amount of the overpayment plus interest from the date of the

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The parties also invoke 36 M.R.S. § 186, a statute among Title 36’s uniform administrative provisions. Section 186 addresses both interest to be paid by “[a] person who fails to pay any tax” and to be repaid by taxing authorities on “overpayments of tax.” By its terms, however, section 186 does not apply to chapter 105 of Title 36, including of course the Tree Growth Tax Law.

overpayment . . . .” See *Camps Newfound/Owatonna Corp. v. Town of Harrison*, 1998 ME 20, ¶¶ 19-20, 705 A.2d 1109, 1115.

The Trust argues that if a taxpayer would be obligated to pay interest on a delinquent tax, then as a matter of symmetry and fairness interest should be paid back if it develops that the penalty tax was not required. This puts the cart before the horse. For this argument, however appealing in theory, would presuppose payment of interest. Yet absent a statute providing for such, Maine law does not mandate the return of taxes, much less interest, when a tax, voluntarily paid, turns out to be illegal or even unconstitutional. *Town of Acton v. McGary*, 356 A.2d 700, 705 (Me. 1976).<sup>6</sup> Whether P.L. 2009, ch. 577, § 3 does or does not require payment of interest with the refund of withdrawal penalties is the question central to the resolution of this appeal. That is, the Trust’s argument more accurately addresses the next question before the Board: whether, given section 3, MRS was obligated to pay interest to the Trust when it refunded the penalties assessed.

In sum, tree growth penalties are imposed by supplemental assessments, and supplemental assessments are simply additional taxes. Hence, penalties are added taxes when property is withdrawn from tree growth. *Dubois v. City of Saco*, 645 A.2d 1125, 1127 (Me. 1994). Taxes include interest. Interest is charged on overdue taxes. In turn, generally when taxes imposed as penalties

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<sup>6</sup> That the Trust paid the penalties under protest does not negate its having paid them voluntarily. Only when a tax is paid under duress—that is, to avoid irreparable injury, by arrest or seizure of property—will the tax be said to have been paid involuntarily. *Exxon Corp. v. King*, 351 A.2d 534, 536 (Me. 1976); *Berry v. Daigle*, 322 A.2d at 326.

are repaid, they are to be repaid with interest. This provides the Board with jurisdiction over the question of interest. This general rule does not, however, implicate P.L. 2009, § 577, § 3 at all. Rather, this brings us precisely to the question whether, *in this case*—centered as it is on section 3—MRS was required to pay the Trust interest on the penalty it had held for over a year.<sup>7</sup>

### III. THE QUESTION OF INTEREST

Having determined that we have the authority, in principle, to consider whether MRS as a taxing authority should have paid interest to a taxpayer, the Trust, when MRS returned the amount paid as a penalty by supplemental assessment, we must decide if, in fact, MRS was obligated to do so here. This is squarely dependent on the meaning that we ascribe to P.L. 2009, ch. 577, § 3, whereas its terms were not relevant to the question of jurisdiction. Whether the Trust is entitled to interest on the refund of the penalties paid is purely a question of Maine law requiring interpretation of the statute. *Cf. Dove Valley Business Park Assoc., Ltd. v. Bd. of County Comm'rs. of Arapahoe County*, 923 P.2d 242 (Colo. App. 1995), *aff'd*, 945 P.2d 395 (Colo. 1996), *cert. denied*, 523 U.S. 1021 (1998).

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<sup>7</sup> These views largely state the fullest scope of the Board's deliberations on the question of jurisdiction, as stated by Mr. Wright. Mr. Smith rested his vote more simply on the Board's plenary authority to administer the Tree Growth Tax Law. Mr. Lowell Sherwood rested his vote on the proposition that it is only fair that an applicant for relief in tree growth cases be allowed to continue to seek relief before the Board, and it is a matter of fairness that we exercise jurisdiction. Mr. Earl Sherwood dissented on the ground that P.L. 2009, ch. 577, § 3 provides for a waiver of the penalties paid, not an abatement, and since the penalties were waived and the supplementally assessed taxes were returned, the Board has nothing left to do.

The Legislature provided in section 3 that “[t]he State Tax Assessor shall waive penalties assessed and refund penalties paid with regard to any parcel of land in the unorganized territory that was withdrawn from taxation under the Maine Tree Growth Tax Law between September 20, 2007 and July 1, 2010 . . . .” We may further narrow what we must decide by stressing that the sole issue is the meaning of only the phrase “. . . waive penalties assessed and refund penalties paid . . . .” The parties have presented thorough and sophisticated arguments on the meaning of the terms “waive penalties assessed.” But only MRS emphasizes the words “refund penalties paid,” and it is on this that our decision turns.

The parties have debated whether the penalties imposed by supplemental assessments were taxes that were finally assessed; whether section 3 is a plain-meaning or ambiguous statute; to what extent we are to consider the statutory context of section 3; whether section 3’s use of the verb “waive” the penalties assessed does not call for a refund of interest, whereas the use of another verb, such as “abate,” would do so; whether the view of the Office of Fiscal and Program Review should inform or dictate our decision; and whether and to what extent we are to defer to MRS’s interpretation of section 3, as the administrative agency entrusted to administer the law, that interest is not required.

Although deliberations revealed some strong opinions among Board Members on some of these points, we find it necessary only to address whether the phrase “refund penalties paid” in section 3 is plain or ambiguous in its

meaning. The parties agree section 3 as a whole has a plain meaning, yet they arrive at diametrically opposing views on whether interest must be paid to the Trust. This would hardly suggest that section 3 has a plain meaning. Language in a statute is ambiguous if it is reasonably susceptible of different interpretations. On the other hand, if statutory language is plain, it defines the Legislature's intent, and it becomes unnecessary to explore the legislative history. *E.g., Peters v. O'Leary*, 2011 ME 106, ¶ 13, \_\_\_ A.3d \_\_\_, \_\_\_.

As to the phrase "refund penalties paid," we conclude that the words are both decisive and plain in their meaning. Words and phrases in a statute are to be construed according to their common meaning. *Pejepscot Paper Co.*, 134 Me. at 244, 184 A. at 767. In our view, it is enough to recognize that section 3 is clear in its use of the phrase "refund penalties paid." When construing a statute, we are to look first to the plain meaning of the statutory language, seeking to give effect to legislative intent. If the statute is clear on its face, a court or board does not look beyond the words themselves. *E.g., Ellen M. Leach Memorial Home v. City of Brewer*, 1998 ME 118, 711 A.2d 149, 151; *Interstate Food Processing Corp. v. Town of Ft. Fairfield*, 1997 ME 193, ¶ 4, 698 A.2d 1074, 1075; *City of Lewiston v. Tri-State Rubbish, Inc.*, 671 A.2d 955, 956 (Me. 1996).

Tax statutes are to be construed strictly and not extended by implication. *E.g., Portland Terminal Co. v. Hinds*, 141 Me. 68, 72, 39 A.2d 5, 7 (1944); *Inhabitants of East Livermore v. Livermore Falls Trust & Banking Co.*, 103 Me.

873 (1901). Maine Revenue Services is, in our view, correct in asserting that section 3 “plainly and unambiguously provides for . . . the affirmative refund of ‘penalties paid’ only—and no more.” RESPONDENT MAINE REVENUE SERVICE’S MEMORANDUM ON THE “INTEREST ISSUE,” at 3-4.<sup>8</sup>

In few areas does the Legislature have greater room to act than the field of taxation. *E.g.*, *Opinion of the Justices*, 601 A.2d 610, 619 (Me. 1991); *McCarty v. Greenlawn Cemetery Ass’n*, 158 Me. 388, 393, 185 A.2d 127, 130 (1962); *Greaves v. Houlton Water Co.*, 143 Me. 207, 211, 59 A.2d 217, 219 (1948). “[T]he Constitution grants legislators, not courts [or, perforce, adjudicatory boards], broad authority (within the bounds of rationality) to decide whom they wish to help with their tax laws and how much help those laws ought to provide.” *Fitzgerald v. Racing Ass’n of Central Iowa*, 539 U.S. 103, 108 (2003). We must be “especially deferential in the context of classifications made by complex tax laws.” *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992). To the extent that section 3 alters other statutory provisions, in particular 36 M.R.S. § 506-A, that require interest to be paid on the return of overpayment of taxes finally assessed, section 3, not section 506-A, governs. More specific statutes take precedence over more general ones. *Camps Newfound/Owatonna*, 1998 ME 20, ¶ 19, 705 A.2d at 1115.

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<sup>8</sup> The text fairly elaborates on the views of the majority of the Board, except to note that Mr. Ted Sherwood also gives emphasis to the fiscal note of the Office of Fiscal and Program Review as evidence that the Legislature did not intend for the repayment of withdrawal penalties to include interest. Mr. Smith dissents from the Board’s decision because he believes that the amount of penalties is a tax, and a taxpayer is entitled to receive interest when the penalties are repaid.

A last point remains. It is also an essential attribute of its power that the Legislature can alter the common law or previously enacted tax statutes. Within constitutional limits, each sitting Legislature can alter what a preceding Legislature has done in the field of taxation, including outright repeal of previously enacted taxes. *Berry v. Daigle*, 322 A.2d 320, 328 (Me. 1974); *City of Augusta v. North*, 57 Me. 392, 394 (1870). Similarly, a sitting Legislature “cannot bind itself so as to prevent a future change” in tax law. *Greaves*, 143 Me. at 213, 59 A.2d at 220. If the legislative power is that broad—and it is—then certainly the Legislature is able to take less dramatic action by supplanting, for a particular circumstance, a rule that prevailed previously at common law. Section 3 is no more than an exercise of that power, affecting a class of taxpayers who persuaded the Legislature they were aggrieved and needed relief from undue burdens of taxation.

The question still lingers, however, whether by section 3 the Legislature has properly and effectively accomplished a change from the common law. The Legislature is “deemed to draft legislation against the backdrop of the common law.” *Maietta Construction, Inc. v. Wainwright*, 2004 ME 53, ¶ 10, 847 A.2d 1169, 1174. While the Law Court there stated that legislation could not “displace” a rule of the common law “without directly addressing the issue,” *ibid.*—something not done here—more often it has allowed a divergence from the common law if a statute revealed such a change by “clear and unambiguous language” or by “necessary implication.” *State Farm Mutual Auto Ins. Co. v. Koshy*, 2010 ME 44, ¶ 34, 995 A.2d 651, 663; *Picher v. Roman Catholic Bishop of*

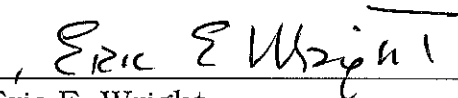
*Portland*, 2009 ME 67, ¶ 24, 974 A.2d 286, 294; *Batchelder v. Realty Resources Hospitality, LLC*, 2007 ME 17, ¶ 23, 914 A.2d 1116, 1124. We thus find that the Legislature—for those property owners covered by section 3, who are without doubt clearly defined—did provide a result different from what obtained at common law.

#### IV. CONCLUSION AND APPEAL RIGHTS

We conclude that “refund penalties paid” means that MRS is to return the very amount the Trust paid as penalties—no more, no less. Whether or not one regards the penalties imposed on the Trust as an overpayment of taxes or a final assessment, in our view the Legislature has the right to define what relief shall be provided to a taxpayer in peculiar circumstances in which it concluded that MRS had misapplied a previous notice requirement. This is all the Legislature has done in section 3.

Either party may appeal this Decision by filing a petition for review in the Superior Court within 30 days of receipt of this Decision pursuant to 5 M.R.S. §§ 11001-11008. If the Decision is not appealed, it shall become binding on the parties at the end of the 30-day period.

Date: December 20, 2011

  
Eric E. Wright  
Chair, Panel B  
State Board of Property Tax Review