**18-674 DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

 **MAINE BOARD OF TAX APPEALS**

**Chapter 100: MAINE BOARD OF TAX APPEALS PRACTICE AND PROCEDURE**

**SUMMARY**: This ~~Chapter~~ chapter establishes rules of practice and procedure before the Maine Board of Tax Appeals as required by 36 M.R.S. § 151-D.

**PART 1. GENERAL PROVISIONS**

**Section 101. Purpose and Scope**

**1. Purpose.**

The purpose of these Rules is to set out efficient and effective procedures by which the Maine Board of Tax Appeals shall fulfill its purpose, as described in 36 M.R.S. § 151‑D(1), of providing Taxpayers with a fair system of resolving controversies with Maine Revenue Services, and to ensure that Taxpayers receive due process. This ~~Chapter~~ chapter shall govern all practice and procedure before the Board under the applicable laws of the State of Maine, unless otherwise directed by the Board.

 **2. Scope.**

 These Rules do not limit the statutory duties or powers of the Board or the Appeals Officers. The absence of a rule does not limit the Board’s or an Appeals Officer’s respective power to act pursuant to their respective statutory authorizations.

**Section 102. Authority**

The authority for this ~~Chapter~~ chapter is 36 M.R.S. § 151-D(10), which provides that “the [B]oard shall adopt rules to accomplish the purposes of this section.”

**Section 103. Definitions**

Unless the context otherwise requires, the following terms shall have the following meanings:

**1. “Administrative Meeting”**

“Administrative Meeting” means a meeting at which the Board will discuss policies, rules, administrative issues or any business other than Taxpayer appeals.

**2. “Appeals Conference”**

“Appeals Conference” means a proceeding presided over by an Appeals Officer at which a Taxpayer, whether represented or unrepresented, is afforded a full and fair opportunity to present oral and written arguments and submit documentary and testimonial evidence in order to show that an assessment or determination issued to the Taxpayer by Maine Revenue Services is incorrect, and at which Maine Revenue Services is afforded a full and fair opportunity to explain, support and otherwise defend the assessment or determination.

**3. “Appeals Meeting”**

“Appeals Meeting” means a meeting of the Board held for the sole purpose of considering and deciding Taxpayer appeals.

**4. “Appeals Office”**

“Appeals Office” means the office established and maintained by the Board to assist the Board pursuant to 36 M.R.S. § 151-D(8).

**5. “Appeals Officer”**

“Appeals Officer” means a person employed by the Board to conduct Appeals Conferences and draft recommended decisions.

**6. “Assessor”**

“Assessor” means the State Tax Assessor.

**7. “Board”**

“Board” means the Maine Board of Tax Appeals as established in 5 M.R.S. § 12004-B(10). The Board has the responsibilities and powers generally set forth in section

12004-B, to be exercised as more particularly provided by 36 M.R.S. § 151-D.

**8. “Bureau”**

“Bureau” means the Bureau of Revenue Services, which may also be referred to as “Maine Revenue Services.”

**9. “Bureau’s Representative”**

“Bureau’s Representative” means the person or persons advocating for the Bureau in proceedings before the Board.

**10. “Chief Appeals Officer”**

“Chief Appeals Officer” means the person appointed by the Commissioner of Administrative and Financial Services to assist the Board and manage the Appeals Office pursuant to 36 M.R.S. § 151-D(9).

**11. “Party”**

“Party” means either the ~~person bringing an appeal~~ Taxpayer or the Bureau ~~of Revenue Services~~.

**12. “Person”**

“Person” means an individual, firm, partnership, association, society, club, corporation, financial institution, estate, trust, business trust, receiver, assignee, or any other group or combination acting as a unit, and the State or Federal government, including any political subdivision or agency of either government, other than the Board and the Appeals Office.

**13. “Record”**

“Record” means all documents and other information submitted by the parties, or obtained pursuant to an Appeals Officer’s request or subpoena, for use by the Appeals Office and the Board in their consideration of appeals pursuant to 36 M.R.S. § 151-D, the Recommended Decision and the parties’ comments concerning the Recommended Decision. “Record” as used herein does not refer to a record as defined under 5 M.R.S. § 9059, which is developed pursuant to an adjudicatory hearing conducted in accordance with the Administrative Procedure Act.

**14. “Tax”**

“Tax” means any tax as defined under 36 M.R.S. § 111, the assessment of, collection of, or any other action concerning which may be appealed under 36 M.R.S. § 151.

**15. “Taxpayer”**

“Taxpayer” means any person required to file a return, or any person the Bureau has asserted is required to file a return, concerning any Tax, or who has or is required to pay, withhold and pay over, or collect and pay over any Tax. “Taxpayer” also means any pass-through entity doing business in the State or having a Maine resident member, including an S corporation, general partnership, limited partnership, limited liability partnership, limited liability company or similar entity, that is not taxed as a C corporation for federal tax purposes.

Any term not defined herein has the same meaning as that term is given in Title 36 of the Maine Revised Statutes, unless the context requires otherwise.

**Section 104. Authorized Representatives**

**1. Representation**

 ~~An individual~~ A Taxpayer may be, but is not required to be, represented ~~by an attorney~~ before the Appeals Office and the Board by an attorney, a certified public accountant, an enrolled agent, an enrolled actuary or any other person appointed by the Taxpayer. ~~Attorneys not licensed to practice law in Maine may be permitted to represent taxpayers before the Appeals Office and the Board as allowed by the Maine Rules of Professional Conduct.~~

**2. Withdrawal of representation**

 A person representing a Taxpayer may withdraw from that representation at any time by providing written notice to the Appeals Officer, the Taxpayer and the Bureau.

**Section 105. Bringing an Appeal**

**1. Who may appeal**

Any Taxpayer who is aggrieved by a reconsidered decision of the Assessor regarding an assessment or determination issued to that Taxpayer, or who has deemed a reconsideration request denied pursuant to 36 M.R.S.A. § 151(2)(C), may appeal to the Board from the Assessor’s reconsidered decision or deemed denial when the amount of Tax or the refund request in controversy was $~~5,000~~ 1,000 or more at the time the Taxpayer requested reconsideration from the Assessor.

**2. Time for filing**

Any Taxpayer wishing to appeal the Assessor’s reconsidered decision to the Board must, in accordance with 36 M.R.S. § 151(2)(F)(1), file a written statement of appeal with the Board within 60 days of receiving the Assessor’s reconsidered decision. A Taxpayer may deem a reconsideration request denied if the Assessor does not issue a reconsidered decision within the 90 day period specified in 36 M.R.S. § 151(2)(B), or any extension thereof, by filing a written statement of appeal with the Board. In accordance with 36 M.R.S. § 153(1), a written statement of appeal shall be deemed filed with the Board on the date it is postmarked by the United States Postal Service or marked with similar evidence of submission for delivery by any delivery service designated by the United States Secretary of the Treasury pursuant to 26 U.S.C. § 7502(f)(2). Upon receiving a statement of appeal the Appeals Office shall forward a copy to the Bureau as notification that an appeal has been filed.

**3. Computation of time**

In computing any period of time prescribed or allowed by this ~~Chapter~~ chapter, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included. Pursuant to 36 M.R.S. § 153(2), when the last day of the prescribed period is a Saturday, a Sunday, or a legal holiday in this State, the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday in this State. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

**4. Request for Appeals Conference**

Pursuant to 36 M.R.S. § 151-D(10)(A), if a Taxpayer desires an Appeals Conference, the Taxpayer must ~~include~~ submit a written request for one ~~an Appeals Conference in that Taxpayer’s written~~within 20 days of filing the statement of appeal.

**5. Processing fee**

When a Taxpayer requests an Appeals Conference, a processing fee of $100, payable to the “Treasurer, State of Maine”, must be tendered to the Appeals Office~~Board~~ within 21 days of the filing of the statement of appeal. ~~For good cause shown, the Board may either grant additional time for payment of the processing fee, or waive payment altogether, provided the Taxpayer files a written request with the Appeals Office for additional time for payment or waiver of payment before payment of the fee is due. The request must describe the reasons why the payment of the fee at the time of the appeal constitutes undue hardship for the Taxpayer.~~

**6. Acknowledgement of statement of appeal**

Upon receipt of a written statement of appeal, the Appeals Office shall send an acknowledgement of receipt to the Taxpayer and ~~shall notify~~ the Bureau ~~as to the filing of the statement of appeal~~.

**7. Withdrawal**

The Taxpayer may withdraw the statement of appeal at any stage of the proceedings prior to the issuance of a decision by the Board pursuant to ~~Chapter 100,~~ section 304 of this chapter, ~~below,~~ with the effect being the same as though the statement of appeal had never been filed.~~, except that any~~ Any conference processing fee paid shall ~~be refundable~~ only be refunded if the statement of appeal is withdrawn prior to the commencement of the conference.

**Section 106. Scheduling**

**1. Assignment to Appeals Officer**

When a statement of appeal is received, the Chief Appeals Officer will assign the appeal to an Appeals Officer for the purposes set forth in ~~Chapter 100, Part~~ part 2 ~~, below~~ of this chapter.

**2. Appeals Conference scheduling**

If an Appeals Conference was requested it will be scheduled as soon as practicable ~~following receipt of the statement of appeal~~, taking into account the availability of the parties. In conformity with 36 M.R.S. § 151‑D(10)(B), the Appeals Office will provide the ~~Taxpayer~~ parties with at least 10 working days’ notice of the date, time and place of the Appeals Conference, except that an Appeals Conference may be held with fewer than 10 working days’ notice if a mutually convenient date, time, and place can be arranged.

**3. Re-scheduling for cause**

The Appeals Conference may be re-scheduled at a party’s request for good cause shown or by consent or agreement of the parties and the approval of the Appeals Officer. The parties will be given 10 working days’ notice of the re-scheduled conference. An Appeals Conference can be re-scheduled with fewer than 10 working days’ notice with the mutual agreement of the parties.

**4.** **Request for representation made at conference**

If at any time during an Appeals Conference an unrepresented Taxpayer clearly states that the Taxpayer wishes to consult with an attorney, a certified public accountant, an enrolled agent, an enrolled actuary, or any other person, the Appeals Officer may suspend the Appeals Conference for a reasonable period of time to allow the Taxpayer to do so.

**5. Appeals Conference attendance**

Due to the confidentiality of Taxpayer information mandated by 36 M.R.S. § 191, attendance at the Appeals Conference shall be limited to the Appeals Officer, the parties, their representatives and witnesses.~~, and any~~ Any other individuals agreed to by the parties~~,~~  may attend the conference if ~~with~~ advance written notice ~~of any such other individuals~~ is given to the Appeals Officer.

**6. Conference not requested**

As provided by 36 M.R.S. § 151-D(10)(D), if no Appeals Conference has been requested, the Appeals Officer shall prepare a recommended decision for the Board’s consideration based upon the written materials submitted in accordance with the provisions of ~~Chapter 100,~~ section 201 of this chapter.

**PART 2. PROCEEDINGS BEFORE THE APPEALS OFFICE**

**Section 201. Filings**

**1. Providing information and evidence to the Appeals Office**

A. Following the filing of the statement of appeal, whether or not an Appeals Conference is scheduled, the Appeals Office shall request that the Taxpayer ~~each party~~ submit written materials that explain and support the Taxpayer’s position regarding the Bureau’s reconsidered decision ~~at issue~~ and identify the relief the Taxpayer is seeking. These materials may consist of no more than 10 pages of legal and factual arguments, to which may be attached any documentary evidence or affidavits the taxpayer wishes the Appeals Officer to consider~~of written testimony in the form of affidavits, documentary evidence, and written legal and factual arguments~~. The ~~parties’~~ Taxpayer’s submission must be filed ~~submissions are due~~ no later than 21 days from the date ~~of~~ the Taxpayer receives the Appeals Officer’s request. A copy of these materials must be provided to the Bureau~~other party~~ at the time ~~of submission~~ that they are delivered to the Appeals Officer.

B. ~~Each party may file a response to the materials submitted to the Appeals Office by the opposing party in accordance with Chapter 100, section 201(1)(A) above~~ After receiving the Taxpayer’s written submission, the Bureau may submit a written response to the Taxpayer’s arguments and evidence, consisting of no more than 10 pages of legal or factual arguments, to which may be attached any documentary evidence or affidavits the Bureau wishes the Appeals Officer to consider. ~~The~~ This response~~s~~ ~~may~~ must be filed no later than ~~14~~21 days from the date of the Bureau’s receipt of the Taxpayer’s submission.~~Appeals Officer’s~~ ~~acknowledgment of receipt of the opposing party’s submissions.~~ ~~Such responses may include any additional evidence and arguments that the party wishes the Appeals Office to consider. In making their written submissions and responses, parties are encouraged to agree on stipulate to relevant facts that are not in dispute.~~ The Bureau ~~Each party~~ must deliver a copy of its response to the Taxpayer~~opposing party~~ at the same time it delivers its response to the Appeals Officer.

C. No later than 7 days after receiving the Bureau’s response, the Taxpayer may submit a reply, a copy of which must be delivered to the Bureau at the same time it is delivered to the Appeals Officer. The Taxpayer’s reply must be limited to the arguments and issues raised by the Bureau in its response, and must consist of no more than 5 pages of legal and factual arguments, to which may be attached any documentary evidence or affidavits the taxpayer wishes the Appeals Officer to consider.

~~C.~~D. The authenticity of all documents submitted by the parties is deemed admitted unless subject to a written objection made no later than 14 days from the date of ~~the Appeals Officer’s acknowledgment of receipt of the respective~~their submission to the Appeals Officer.

~~D.~~E. Upon a party’s request, and with a showing of good cause, the Appeals Officer may extend the deadlines and increase the page limits for submissions made pursuant to this Section.

**2. Additional evidence**

If, during the course of the conference or, where no conference was requested, during the Appeals Officer’s review of the parties’ submissions, it appears that additional evidence or factual or legal analysis is necessary for the fair determination of the appeal, the Appeals Officer may set a deadline for the submission of any such additional evidence or analysis, and shall provide an opportunity for the non-submitting party to file a written response to such evidence or analysis.

**3. Appeals Conference**

Appeals Conferences shall ordinarily be held at the Board’s offices at 108 Sewall Street in Augusta, Maine. An Appeals Conference shall be conducted in an informal manner. ~~and the~~ The Appeals Officer shall ensure that both the Taxpayer and the Bureau’s Representative have an equal opportunity to present testimony and arguments. The parties may present ~~unsworn~~ oral testimony ~~and documentary evidence~~ at the Appeals Conference and the Appeals Officer may allow the parties to question one another directly. The Appeals Conference may be conducted in whole or in part via telephone. The Appeals Conference may be recessed and reconvened as the Appeals Officer deems necessary or appropriate for the fair determination of the appeal.

**Section 202. Appeals Officer**

**1. Duty and powers**

It is the Appeals Officer’s role to administer the appeal process and to render a fair and impartial recommended decision to the Board. The recommended decision must be based on the record as a whole and resolve all material issues in the appeal. In fulfilling this role, the Appeals Officer is authorized to do the following:

A. To hold ~~procedural~~ case management conferences, which may be conducted via telephone, if the Appeals Officer believes they may achieve one or more of the following purposes:

(1) ~~identifying~~ Identifying and clarifying the issues;

(2) ~~developing~~ Developing ~~stipulations~~ agreement as to ~~of~~ facts ~~and admissions as to uncontested facts~~;

(3) ~~identifying~~ Identifying witnesses and exhibits, and apprising the parties as fully as is practicable of the evidence to be offered by the opposing party~~parties~~ in order to eliminate as far as possible the element of surprise;

(4) ~~identifying~~ Identifying and resolving disputes regarding the production and admissibility of evidence, including the making of evidentiary rulings; and

(5) ~~taking~~ Taking any other action the Appeals Officer determines is appropriate for the provision of a fair, efficient and effective appeal process;

B. To rule on any request that may be made at the Appeals Conference, or at any other time during the appeal process prior to delivery of the recommended decision to the Board;

C. To regulate the presentation of evidence, including the order of witnesses, and to otherwise regulate the participation of the parties;

D. To examine parties and witnesses;

E. To rule on the admissibility of evidence pursuant to ~~Chapter 100, Section~~section 203 of this chapter;

F. To ensure that relevant evidence is incorporated into the record;

G. In the event that either the Taxpayer or the Bureau’s Representative fails to appear at a conference, to prepare a recommended decision for the Board based upon the arguments and evidence presented by the party attending the conference and the written materials submitted by both parties prior to the scheduled date of the conference;

H. With the agreement of the parties, to conduct a consolidated conference concerning the appeals of more than one Taxpayer when those appeals involve substantially similar issues of fact and law.

I. To set deadlines for the submission of additional evidence and materials, after the expiration of which the Appeals Officer will not consider additional evidence and materials submitted by the parties.

**2*. Ex Parte* communications**

In accordance with 36 M.R.S. § 151-D(10)(G), the Appeals Officer shall not have any *ex parte* communications with or on behalf of any party, except on questions that involve ministerial or administrative matters that do not address the substance of the issues or the positions taken by the Taxpayer or the Bureau. To prevent such *ex parte* communications, all parties shall furnish a copy of any requests, filings, or other communications with the Appeals Officer to the opposing party. The Appeals Officer may communicate with the Board and other employees of the Appeals Office.

**3. Recusal**

An Appeals Officer may be recused from participating in an appeal as follows:

A. By request of a party. Either party may request that the assigned Appeals Officer be recused if that party believes the Appeals Officer has a conflict of interest or for some other reason will not be able to fairly conduct the proceedings and issue an impartial recommended decision. In the event such a request is made, the Chief Appeals Officer shall determine whether to assign another Appeals Officer to the matter.

B. Upon the Appeals Officer’s own determination. If the Appeals Officer assigned to an appeal believes he or she may have a conflict of interest, or for any other reason may not be able to fairly conduct the proceedings and issue an impartial recommended decision in an assigned appeal, the Appeals Officer shall so notify the Chief Appeals Officer, who may assign another Appeals Officer to the matter.

**Section 203. Evidence**

1. **Formal Rules of Evidence; Privilege; Admissibility**

The Appeals Officer need not observe the rules of evidence observed by the Maine courts, but shall observe the rules of privilege and the protection of work product recognized under Maine law. The Appeals Officer shall admit evidence if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Appeals Officer may exclude evidence which is irrelevant or unduly repetitious.

**2. Testimony**

~~Testimony~~ Evidence may be given orally at the Appeals Conference or, if no conference was requested, by an unsworn statement or sworn affidavit ~~regardless of whether an Appeals Conference was requested~~. If an Appeals Conference was requested such statements and affidavits must be submitted in advance of the Appeals Conference in accordance with ~~Chapter 100,~~ section 201 of this chapter. If ~~testimony~~ evidence is offered through a sworn affidavit, the submitting party shall make the affiant available for cross-examination ~~upon advance request of~~ unless the opposing party waives the opportunity to cross-examine the affiant. Such cross-examination may be conducted with the affiant present in person or via telephone during the Appeals Conference. If the affiant is not made available for cross-examination as requested, the affidavit may be excluded from evidence by the Appeals Officer. In an appeal in which no conference was requested, the Appeals Officer may, upon the request of a party and for good cause shown, allow cross-examination of an affiant. Such cross-examination may be conducted via telephone and shall be limited to questions concerning the information contained in the affidavit. At the conclusion of any cross-examination, the party that submitted the affidavit will also be given an opportunity to question the affiant.

**3. Weight of evidence; Credibility**

In issuing a recommended decision, the Appeals Officer shall determine the weight to be given to the evidence submitted and the credibility of witness statements~~testimony offered~~, although, as provided by 36 M.R.S. § 151-D(10)(I), and as set forth in ~~Chapter 100,~~ section 304 of this chapter, the Board is not bound by the Appeals Officer’s determinations.

**4. ~~Stipulation of~~ Agreement on facts**

When the parties ~~stipulate to~~ agree on a fact or facts, the Appeals Officer may make a finding of fact on the basis of ~~the stipulation~~ that agreement. Signed statements or ~~on-the-record~~ oral statements made by parties during Board proceedings, including those made at a ~~preliminary procedural~~ case management conference conducted via telephone, are sufficient ~~as stipulations~~ to show agreement.

**5. Official notice of facts**

The Appeals Officer may take official notice of a fact upon the Appeals Officer’s own motion or at the request of a party. Official notice may be taken of any fact of which judicial notice could be taken, and, in addition, of any general or technical matter within the specialized experience or knowledge of the Appeals Officer and of any non-confidential public records. The Appeals Officer will notify the parties of any material of which he or she intends to take official notice and shall afford the parties an opportunity to contest the substance or materiality of the material to be noticed.

**6. Burden of proof**

The Taxpayer has the burden of proving that it is more likely than not that the Bureau erred in applying or interpreting the relevant law.

**7. Nature of the Board’s evidentiary process**

All proceedings before the Board, including those related to obtaining evidence, are designed to be informal, efficient, inexpensive, and to not require professional legal assistance. To this end, the production of documents and other evidence by the parties is governed by the primarily voluntary process set forth in section 201 of this chapter. Except in extraordinary circumstances, an Appeals Officer will only consider evidence that is submitted pursuant to that process, in response to a request from the Appeals Officer for additional information, or in response to a subpoena issued by the Appeals Officer.

**Section 204. Subpoenas**

**1. On initiative of Appeals Officer or by request**

The Appeals Officer, on his or her own initiative or at the request of a party, may issue a subpoena for documentary or testimonial evidence if the Appeals Officer determines that the requested evidence is relevant to an issue of fact and that the issuance of the subpoena is necessary for carrying out the responsibilities of the Board. Any requests for a subpoena must contain:

A. The title of the matter and the Board’s docket number;

B. The name and address of the party requesting the subpoena;

C. The name and address or location of any person to be subpoenaed;

D. A description of any records, files or other documents to be subpoenaed, including their location and the identity of the person who has custody of them; and

E. A brief statement explaining why the testimony or documents to be subpoenaed are relevant to an issue of fact in the appeal, why that evidence cannot be obtained by other means, and why the issuance of the subpoena is necessary for carrying out the responsibilities of the Board.

A copy of the request must be sent to the non-requesting party at the time it is submitted to the Appeals Officer.

**2. Objections**

If the non-requesting party objects within 7 days of receiving a copy of the request, the Appeals Officer will schedule a telephone conference with the parties to determine whether the evidence sought is relevant to an issue of fact in the appeal, whether that evidence cannot be obtained by other means, and whether the issuance of the subpoena is necessary for carrying out the responsibilities of the Board.

**3. Issuance of Subpoenas after approval**

If the Appeals Officer determines that the request seeks evidence that is relevant to the appeal and cannot be obtained by other means, and that the issuance of the subpoena is necessary for carrying out the responsibilities of the Board, the Appeals Officer shall issue the subpoena and forward it to the requesting party for service. The time, date and location for the production of any documents sought must be inserted on the face of the subpoena by the requesting party, allowing at least 14 days after service for production. When seeking documents, the requesting party must indicate that compliance may be achieved by the recipient sending the requested documents by certified mail or common carrier to an address specified by the requesting party on or before the date set for production. When seeking testimony, the recipient must indicate the date, time and location of the Appeals Conference at which the testimony is desired.

**4. Limitations and requirements**

A. Witnesses shall be subpoenaed only within the same territorial limits and in the same manner as witnesses in civil cases before the Maine courts. Witnesses subpoenaed shall be paid the same fees for attendance and travel as in civil cases before the Maine courts. All such fees and costs shall be paid by the party requesting the subpoena.

B. If a subpoena requires the disclosure of a trade secret or other confidential research, development, or commercial information, or requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles one way to attend a hearing, then the Appeals Officer may cancel or modify the subpoena. If the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the Appeals Officer may order appearance or production under specified conditions.

**5. Petitions to cancel or modify subpoenas**

A. Any witness subject to a subpoena may petition the Appeals Officer to cancel or modify the subpoena and the Appeals Officer shall give prompt notice of any such petition to the party who requested issuance of the subpoena.

B. After such investigation as he or she considers appropriate, the Appeals Officer may grant a petition to cancel or modify the subpoena in whole or in part upon a finding that the subpoena:

(1) Does not seek evidence that relates with reasonable directness to any matter at issue;

(2) Fails to allow a reasonable time for compliance;

(3) Requires disclosure of privileged or other protected matters and no exception or waiver applies;

(4) Is unreasonable, oppressive, or subjects a person to undue burden;

(5) Is not necessary for carrying out the responsibilities of the Board; or

(6) Seeks information that is obtainable by other means.

~~Requests for and the issuance of subpoenas shall conform to the Maine Administrative Procedure Act, 5 M.R.S. §9060.~~

**Section 205. Recommended Decision of the Appeals Officer**

**1. Contents of recommended decision**

Following the conference or, if the Taxpayer did not request a conference, following review of the documentary record, the Appeals Officer will prepare a recommended decision for consideration by the Board. The recommended decision will include at a minimum:

A. A clear and concise statement of the matter which is the subject of the appeal and of the issues which must be resolved to decide the appeal;

B. The date and place of the conference and participants at the conference, if one was requested;

C. The evidence upon which the recommended decision is based;

D. Findings of fact and law, which must be sufficient to apprise the parties and the Board of the basis for the recommended decision;

E. A clear statement of result resolving all material issues under consideration; and

F. A clear explanation of the reasoning underlying the result, including references to applicable record citations, laws, and rules.

**2. Comments, modification, and delivery to the Board**

A. Before submitting the recommended decision to the Board for its consideration, the Appeals Officer shall send a copy of the decision to each of the parties for their review and comment. A party’s comments must be in writing, may be no more than 3 pages in length, and must be filed by the deadline set by the Appeals Officer~~, with a copy being provided to the other party at that time~~. A copy of the comments must be delivered to the opposing party at the same time they are filed with the Appeals Officer. ~~If the comments involve any disagreement regarding witness credibility or the admissibility or weight of evidence as determined by the Appeals Officer, the party must provide a detailed explanation of the issues in disagreement and a detailed description, recitation, or copy of the testimony or other evidence at issue.~~

B. The Appeals Officer may, but is not required to, modify the recommended decision in response to the parties’ comments. If the recommended decision is modified in response to comments, the Appeals Officer will send a copy of the modified recommended decision to the parties for further comment. Any comments must be in writing, may be no more than 3 pages in length, and must be received by the deadline set by the Appeals Officer. A copy of the comments must be delivered to the opposing party at the same time they are filed with the Appeals Officer. If the Appeals Officer does not modify the recommended decision, he or she will send the parties a written response to their comments.

C. The Chief Appeals Officer will deliver copies of the recommended decision to the Board, both as originally written and, if applicable, as modified, together with the parties’ written comments and the Appeals Officer’s written responses to the comments.

D. The Appeals Officer will send to each party a copy of the recommended decision as delivered to the Board.

**PART 3. PROCEEDINGS BEFORE THE BOARD**

**Section 301. Duties of Board Members**

**1. Decision making**

Pursuant to 36 M.R.S. § 151-D(10)(I), the Board members shall consider the recommended decision and render a fair and impartial decision on the merits of the appeal in accordance with the provisions of ~~Chapter 100,~~ section 302 of this chapter ~~, below~~. ~~The Board’s decision must be based on the record as a whole and the applicable statues and administrative rules, and it must resolve all material issues in the appeal.~~

**2. *Ex Parte* communications**

Members of the Board shall not have any *ex parte* communications with or on behalf of any party, except on questions that involve ministerial or administrative matters that do not address the substance of the issues or the positions taken by the parties.

**3. Recusal**

A Board member may be recused from participating in the ~~decision~~ deciding of an appeal as follows:

A. By request of a party. Either party may, in writing, request that a Board member be recused if that party believes that the Board member has a conflict of interest or for some other reason will not be able to render an impartial decision. In the event such a request is made, the Board Chair, in consultation with the Board member whose recusal is sought, shall determine whether the Board member should be recused from participation in the appeal. If the request is denied, the Chair shall state the reasons for the denial of the request.

B. Upon the Board member’s own motion. If a Board member believes he or she has a conflict of interest, or for any other reason believes he or she may not be able to fairly and impartially participate in the Board’s consideration of the recommended decision and the issuance of a final decision on the appeal, he or she shall so notify the Board Chair prior to the Board’s consideration of the Appeals Officer’s recommended decision in that matter. The Chair shall then recuse the Board member who shall not participate in the consideration of the appeal and the rendering of a decision by the Board.

C. Recusal of the Chair. When a party requests that the Board Chair be recused, the Board Chair shall designate another Board member to determine whether the request shall be granted. If the request is denied, the designated Board member shall state the reasons for the denial. If the Chair believes that he or she has a conflict of interest, or for any other reason believes he or she may not be able to fairly and impartially participate in the Board’s consideration of an appeal, he or she shall so notify the other Board members prior to the Board’s consideration of the Appeals Officer’s recommended decision in that matter. The Chair shall then be recused and shall not participate in the consideration of the appeal and the rendering of a decision by the Board.

**Section 302. Board Deliberations**

**1. Public proceedings**

Only Administrative Meetings of the Board are public proceedings pursuant to 1 M.R.S. § 402(2). Appeals Meetings are not public proceedings.

**2. Board consideration**

The Board will meet to consider an appeal on a timely basis, and will provide the parties with at least ~~10~~15 ~~working~~ days’ notice of the date, time and location of ~~its meeting~~the Appeals Meeting. ~~A party may request that the Board meeting at which the party’s appeal is to be considered be scheduled by a specific date. The Board may grant the request, but is not required to do so.~~ Upon the request of a party, the Appeals Meeting may be rescheduled to a later date or time for good cause shown. Except in extraordinary circumstances, the request must be made in writing and must state whether the request is opposed by the other party. The request may be granted or denied, in whole or in part, by the Chief Appeals Officer after consulting with the Board members. If the Appeals Meeting is rescheduled, the parties will be given at least 10 days’ notice of the rescheduled meeting. The Board may also reschedule an Appeals Meeting on its own initiative.

**3. Recommended decision and comments**

A copy of the recommended decision shall be provided to each Board member, along with the parties’ comments and other materials as specified in ~~Chapter 100,~~ section 205 of this chapter~~, above~~, in advance of the meeting at which the recommended decision will be considered.

**4. Statement by party**

A. At least ~~five~~ 10 days prior to the date set for the Board’s consideration of the appeal, a party may submit a written statement to the Board summarizing the party’s position. Such written statements shall be no more than ~~two~~ 5 pages in length and shall be in 12 point font on 8.5 by 11 inch paper.

B. At the written request of a party made at least ~~five~~10 days prior to the date set for the Board’s consideration of the appeal, the Board may, in its discretion, allow each party to make an oral statement to the Board as provided in section 303(1)(E) of this chapter~~of position not to exceed 10 minutes in length~~.

C. Each party must deliver a copy of its written statement ~~of position~~ and its request to make an oral statement to the opposing party at the same time it files them with the Board. If the party refers to specific portions of the record in its written statement or, if prior approval for an oral statement is given by the Board and the party intends to refer to specific portions of the record in its oral statement, that party must provide copies of those portions of the record to the Board and the opposing party at the same time it files its written statement or request to make an oral statement. Failure to provide records to the Board as required by this subsection shall be grounds for the Board to exclude any references by the party to those records.

 **5. Addressing Board via telephone**

 Upon written request, the Board may allow a party to address the Board via telephone if the Board finds that appearing in person would create an undue hardship for the party based on a consideration of: (1) the distance the party must travel; (2) costs the party would incur; (3) the health of the party; or (4) other factors the Board deems appropriate.

**Section 303. Rules of Order**

**1. Appeals Meeting procedures**

A. Prior to each meeting, the Appeals Officer who drafted the relevant recommended decision shall brief the Board on the facts and law at issue in the appeal and the basis for the Appeals Officer’s findings.

~~A.~~B. The Chair will call the meeting to order at the appointed time.

~~B. The Chair will then call each appeal on the agenda in turn until all appeals have been considered and the Board has taken action on each appeal.~~

C. ~~Upon calling an appeal,~~ ~~the~~ The Chair will direct ~~request that~~ all persons other than Board Members, the Chief Appeals Officer, the Board Secretary, any Appeals Officer whose presence has been requested by the Board, the parties, and the parties’ representatives to leave the room while the appeal is considered.

D. Unless otherwise authorized by the Board in response to a written request submitted at least 10 days prior to the meeting, with a copy sent to the opposing party, each party is limited to having 2 individuals present at the meeting. These individuals may be the party and a representative or two representatives. One of the individuals present must be designated as the party’s spokesperson.

~~D. The Chair will then call upon the Chief Appeals Officer to present summarize the Appeals Officer’s recommended decision and the parties’ written statements.~~

E. The Chair will, if the Board has granted to the parties an opportunity to make an oral statement to the Board, ~~then call upon the parties or their representatives, in turn, to make their oral statements~~ allow each designated spokesperson 20 minutes in which to make his or her statement and answer questions from the Board, beginning with the Taxpayer’s spokesperson. Each spokesperson may reserve up to three minutes of this time in which to speak prior to the Board asking questions. The Taxpayer’s spokesperson may also reserve up to three minutes for rebuttal. The Board may enlarge the time available for both parties to make their oral statements if the Board finds that doing so is necessary to reach a fair decision on the appeal.

~~F. Upon conclusion of the oral statement, the Chair will allow Board members to ask questions of the parties, their representatives, or the Chief Appeals Officer.~~

~~G.~~F. At the conclusion of the oral statements, or, if none were made, when the Board members are ready to deliberate on the appeal, ~~Once all questions have been asked and answered,~~ the Chair will direct the parties and their representatives to leave the room. ~~open the floor to discussion among the Board members of the pending appeal~~.

~~H.~~G. During or following deliberations~~discussion~~, any Board member may move that the Board decide the appeal in one of the four ways set forth in ~~Chapter 100, Section~~ section 304(1)~~(A) - (D)~~ of this chapter~~below~~. Such a motion must be seconded, and proceed to discussion and a vote in the same manner as any other motion.

**2. Administrative Meeting procedures**

A. The Board’s administrative meetings are public proceedings within the meaning of the Maine Freedom of Access Act (FOAA), and the Board will give reasonable public notice of such meetings.

B. The Chair will call the meeting to order at the appointed time.

C. The Chair will proceed with each agenda item in turn.

D. The Board will discuss, and take any appropriate action regarding each agenda item. Action on an agenda item includes tabling that item.

**3. General rules of order**

The following general rules of order apply to all Board meetings:

**A. Recording.** The Appeals Office shall make an audio recording of all meetings of the Board.

**~~A.~~B. Quorum**. In accordance with 36 M.R.S. § 151-D(5), the presence of two members at a Board meeting constitutes a quorum and a vacancy on the Board does not limit the remaining two member’s ability to exercise all the Board’s powers. The Chair, whenever present, will preside over Board meetings. Whenever the Chair is absent, or has recused himself or herself from consideration of an appeal, one of the two Board members present will assume the Chair’s duty of presiding over the meeting.

**~~B.~~C. Actions taken by motion**. All Board actions will be taken by motion of a Board member. Every motion must be seconded. If a motion is not seconded, the Chair will rule it out of order and proceed with the meeting as though it had not been made. If a motion is seconded, the Chair will state the motion and open the floor to discussion of the motion. Once discussion has concluded, the Chair will call for a vote on the motion.

**~~C.~~D. Motions may be made by any Board member**. Any Board member, including the Chair and any member presiding over a Board meeting in the Chair’s absence, may make or second a motion.

**~~D.~~E. When motions are not in order**. Only one motion may be considered at a time. When a motion has been made, no other motion is in order until the Chair has either ruled the motion out of order or stated the pending motion and opened the floor for discussion. The only motions that may be made during discussion of a pending motion ~~is a~~ are motions to amend or table the pending motion.

**~~E.~~F. Procedure on motions to amend**. The following procedure will govern motions to amend:

(1) Like any other motion, a motion to amend must be seconded or the Chair will rule it out of order and discussion of the underlying motion will resume. If the motion to amend is seconded, the Chair will state the motion to amend and open the floor for discussion of the motion to amend. Once discussion has concluded, the Chair will call for a vote on the motion to amend.

(a) If the vote is in favor of the motion to amend, the Chair will state the underlying motion, as amended, and will open the floor to discussion. Once discussion of the underlying motion, as amended, has concluded, the Chair will call for a vote on the underlying motion, as amended. No further action need be taken on the underlying motion.

(b) If the motion to amend is defeated, the suspended discussion of the underlying motion will be resumed.

**~~F.~~G. Leave to withdraw a motion**. The moving Board member, at any point prior to a vote on his or her motion, even when his or her motion has been amended, may request leave to withdraw his or her motion. A request for leave to withdraw is not required to be seconded. When a request for leave to withdraw has been made, the Chair will ask if there is any objection to the request for leave to withdraw. If there is no objection, the Chair will grant the request and it will be as if the motion, and any amendment to the motion, was never made. If there is an objection, the Chair will call for a vote on the request for leave to withdraw. If the vote is to deny, the member’s motion remains pending before the Board.

**Section 304. Board Decisions**

**1. Action after consideration**

In accordance with 36 M.R.S. § 151-D(10)(I), the Board may, after considering the recommended decision:

A. Adopt the recommended decision as delivered to the Board;

B. Modify the recommended decision;

C. Send the recommended decision back to the Appeals Officer who heard the appeal, if possible, and if not, to a replacement Appeals Officer, ~~for the taking of further evidence, for the additional consideration of issues including the admissibility of and weight given to specific evidence or the credibility of a witness, for the reconsideration of the application of law or rules, or~~ for such other proceedings or considerations as the Board may specify; or

D. Reject the recommended decision in whole or in part and decide the appeal itself on the basis of the existing record, and in doing so make its own determinations concerning the admissibility of and weight given to evidence and the credibility of witnesses.

**2. Board decision**

In all appeals except those where the Board sends the recommended decision back to the Appeals Officer for further proceedings, the Board will issue a written ~~final administrative~~ decision on the appeal. The 60-day period for filing a petition for review of that decision in Superior Court begins to run from the date of a party’s receipt of the Board’s written decision~~,~~ unless a timely request for reconsideration is made. Prior to the issuance of the Board’s written decision, any Board member may call a special meeting for the Board to reconsider its vote taken under section 303(1)(H) of this chapter on the grounds that the Board has made an error or based its decision in whole or in part upon information that has proven to be erroneous.

**Section 305. Reconsideration**

**1. Request for reconsideration**

A party may file a written request for reconsideration with the Board within 20 days of the date of receipt of the Board’s ~~final administrative~~written decision based on the party’s claim that:

A. relevant new evidence exists that was previously unknown to the party or, if known by the party, could not be obtained by that party prior to the issuance of the Board’s decision; or

B. reconsideration is necessary in order to correct a procedural error, factual error, or error of law.

A copy of a request for reconsideration must be sent to the opposing party at the time the request is filed with the Board. The opposing party may file an objection to the request for reconsideration within seven days of receiving a copy of the request, with a copy sent to the party requesting reconsideration.

**2. Grant or denial of reconsideration by the Board**

Any request for reconsideration not granted within 20 days from the date of filing is presumed denied.

If the Board grants a request, it will notify the parties in writing and either:

A. Remand the appeal to the same Appeals Officer that heard the appeal previously, if possible, and if not, to a replacement Appeals Officer, for further proceedings or other action as the Board may direct; or

B. Address and resolve the issues raised in the reconsideration request itself by the taking of additional evidence in proceedings conducted in accordance with this ~~Chapter~~ chapter or by other action to correct procedural errors, factual errors, or errors of law.

Upon the completion of the reconsideration process, the Board shall issue its ~~reconsidered decision which shall constitute the Board’s~~ final administrative decision.

**3. Running of appeal period**

The 60-day period for filing a petition for review with the Superior Court does not begin to run until the earlier of:

A. A party’s receipt of notice that the request for reconsideration has been denied;

B. The request for reconsideration is presumed to be denied; or

C. In cases where the request for reconsideration is granted, the date of a party’s receipt of the Board’s ~~reconsidered~~ final administrative decision.

**4. Clerical mistakes**

A. Clerical mistakes in decisions or orders that arise from an oversight, omission or scrivener’s error may be corrected by the Board at any time on its own initiative or on a party’s motion.

B. During the period for appealing a final determination of the Board, such mistakes may be so corrected before an appeal is docketed in the Superior Court, and thereafter while the appeal is pending shall only be corrected with leave of the Court.

**Section 306. Publication of redacted decisions.**

The Board may publish its decisions on its website in redacted format so as not to reveal a Taxpayer’s identity or any information about a Taxpayer that is made confidential by state or federal law.