



# Legal Overview

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# Agenda

- Overview Office of General Counsel (OGC)
- Sources of Legal Authority
- Addressing Tax Issues
- Reconsideration Process
- Confidentiality
- Careers with MRS



## Disclaimer

This presentation is for information purposes only. Nothing in this presentation shall constitute legal advice.

Reliance on any information in this presentation shall not constitute “substantial authority” for purposes of penalty abatement or statute of limitations under Title 36, Maine Revised Statutes.



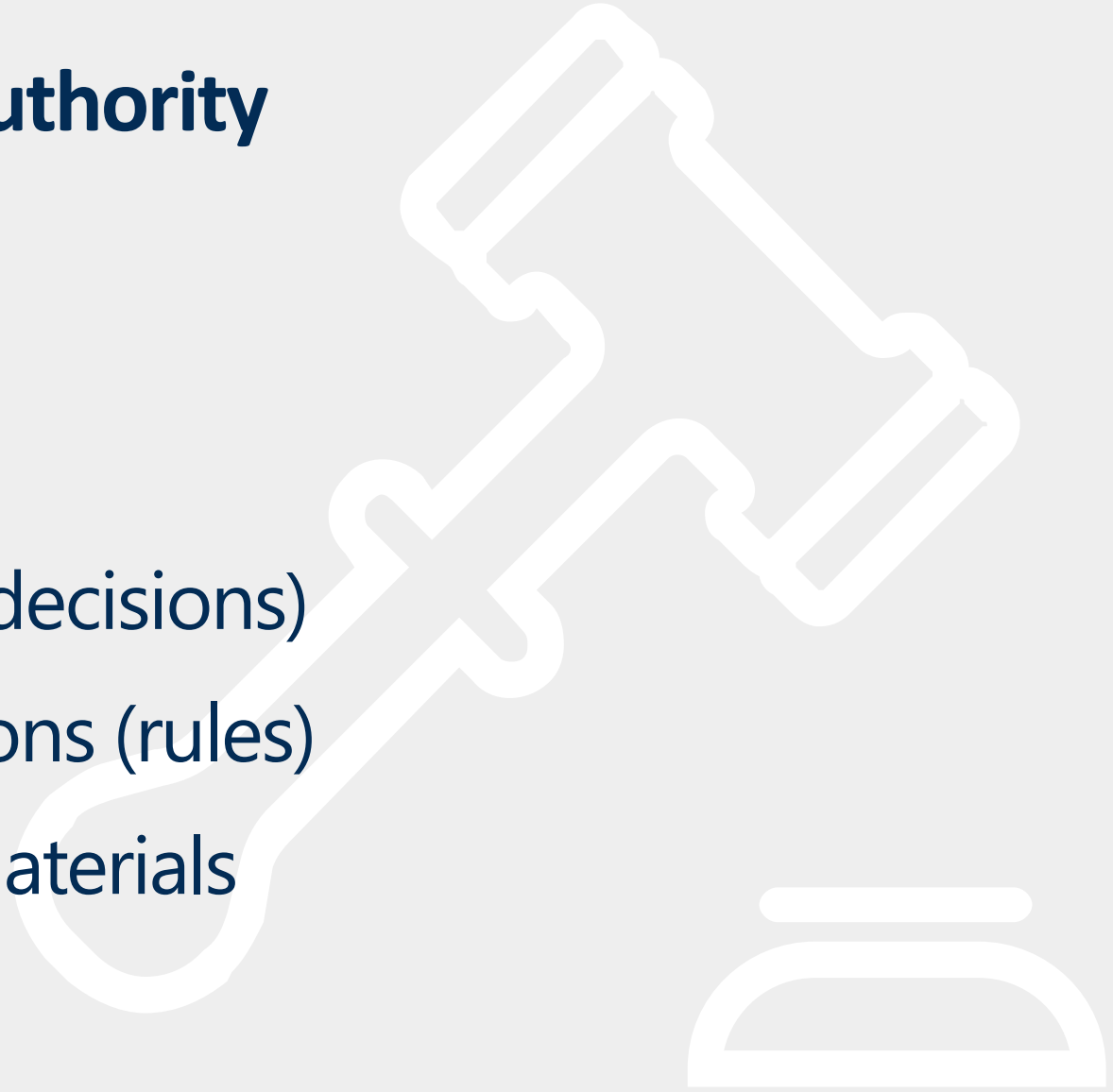
# Overview of OGC

- Attorneys
- Counsel to Assessor and all MRS Divisions
- Oversee reconsideration/appeals process
- Oversee rulemaking process
- Assist legislation (Office of Tax Policy)
- Recruiting/Training
- Litigation?



# Sources of Legal Authority

- Constitution
- Statute
- Case Law (court decisions)
- Agency Regulations (rules)
- Administrative Materials

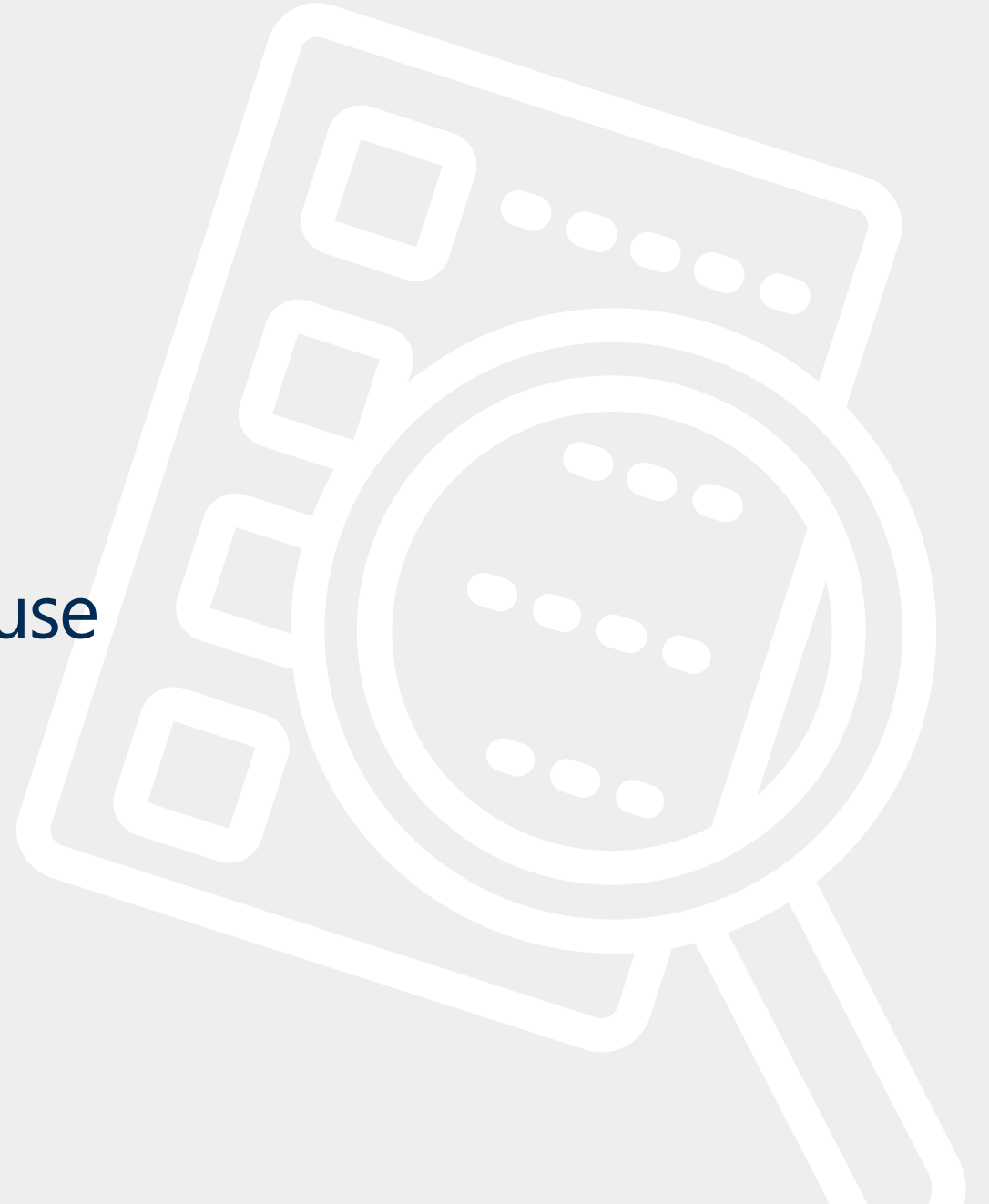


# Constitution



# U.S. Constitution

- Equal Protection
- Commerce Clause
- Dormant Commerce Clause
- Due Process
- Supremacy Clause
- Others...





# Conformity

How a state's income tax laws conform to federal income tax laws

## Two Types of Conformity:

1. **Rolling Conformity (automatic)**
2. **Static Conformity (fixed date)**







# Static Conformity - Maine

36 M.R.S. § 111(1-A)



**“Code” means the United States Internal Revenue Code of 1986 and amendments to that Code as of December 31, 2019.**



# Static Conformity - Maine

Effect?



**Annual Conformity Bill**



# Maine Constitution

## Non-delegation



**Article IX, Section 9. Power of taxation.  
The Legislature shall never, in any manner,  
suspend or surrender the power of  
taxation.**



# Starting Point for Maine Income Tax

36 M.R.S. § 5121 - The Maine taxable income of a resident individual is equal to the individual's federal adjusted gross income with the modifications and less the deductions and personal exemptions provided in this chapter.

36 M.R.S. § 5102(8) – "Maine net income" means, for any taxable year for any corporate taxpayer, the taxable income of that taxpayer for that taxable year under the laws of the United States as modified by section 5200-A and apportionable to this State under chapter 821.

**Statute**



# Maine Revised Statutes (M.R.S.), Title 36 (Taxation)

- Part 1 – General Provisions
- Part 2 – Property Taxes
- Part 3 – Sales and Use Tax
- Part 4 – Business Taxes
- Part 5 – Motor Fuel Tax
- Part 6 – Inheritance, Succession and Estate Tax
- Part 7 – Special Taxes
- Part 8 – Income Taxes
- Part 9 – Taxpayer Benefit Programs
- Part 10 – Interstate Tax Compacts
- Part 11 – Tax Policy Goals

<http://legislature.maine.gov/statutes/36/title36ch0sec0.html>



# Maine Revised Statutes (M.R.S.), Title 36 (Taxation)

## Part 1, Chapter 7 – Uniform Administrative Provisions

- Powers and duties of Assessor
- Assessments and Appeals
- Definitions
- Settlements
- Interest & Penalties
- Collections
- Set offs
- Tax liens
- Trust Fund Tax (responsible individual)
- Confidentiality

**Other Titles? Federal statutes?**

# Case Law





# State Judicial Branch of Maine



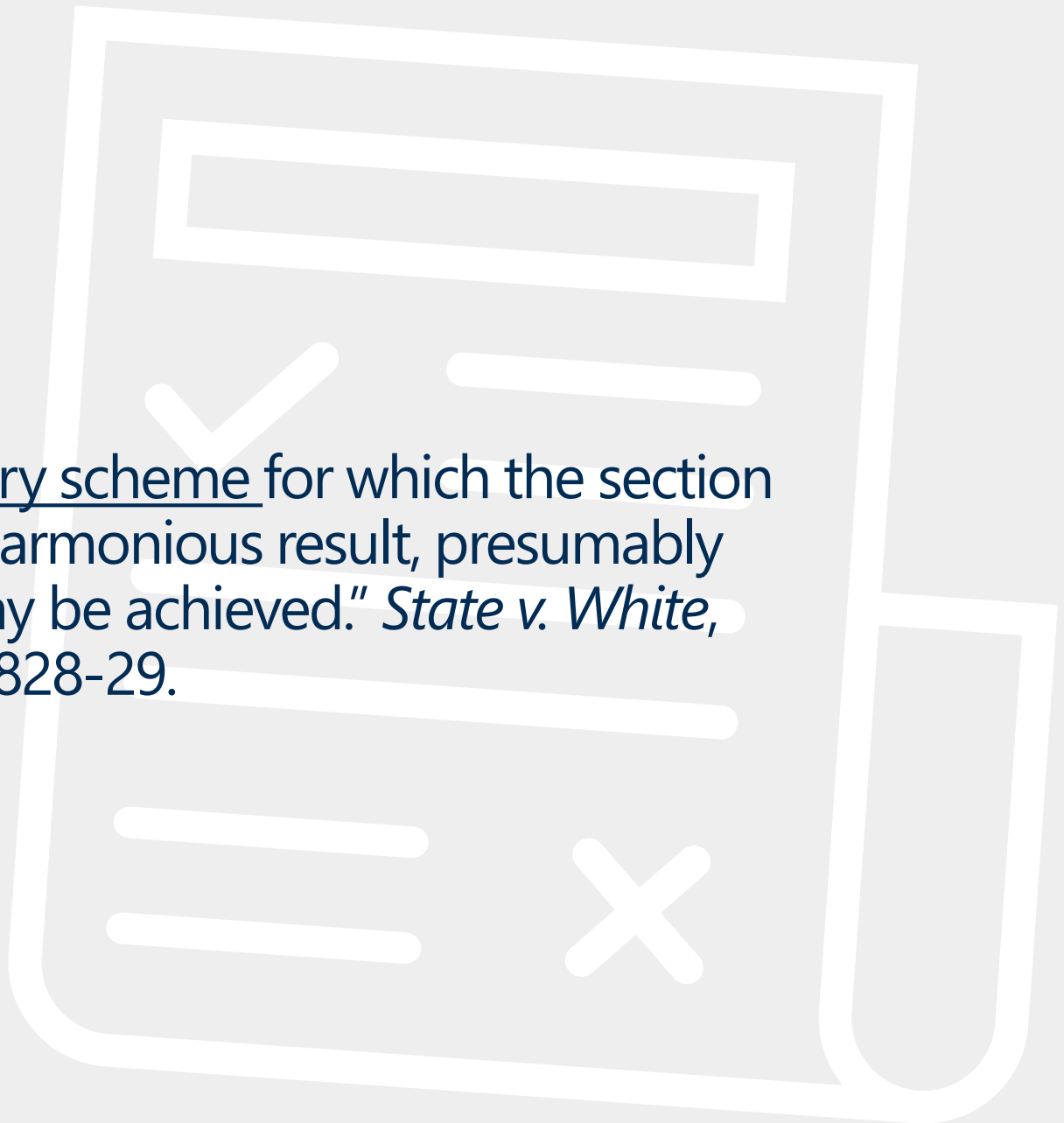
**Dockets and Decisions**  
**[www.courts.maine.gov/index.shtml](http://www.courts.maine.gov/index.shtml)**



# Statutory Construction

## Legislative Intent?

We “consider the whole statutory scheme for which the section at issue forms a part so that a harmonious result, presumably the intent of the Legislature, may be achieved.” *State v. White*, 2001 ME 65, ¶ 4, 769 A.2d 827, 828-29.





# Constitutional Presumption

"A statute is presumed to be constitutional and the person challenging the constitutionality has the burden of establishing its infirmity." *Kenny v. Dep't of Human Servs.*, 1999 ME 158, ¶ 7, 740 A.2d 560, 563



## Exemptions & Credits

A tax credit, like a tax exemption, must be construed narrowly because “[s]uch special privileges are in conflict with the universal obligation of all to contribute a just proportion toward the public burdens.” *James Goggin et al. v. State Tax Assessor*, 2018 ME 111, 191 A3d 341, 08/02/2018, citing *City of Bangor v. Rising Virtue Lodge, No. 10, Free & Accepted Masons*, 73 Me. 428, 433 (1882).



## Example - Interest

36 M.R.S. § 186

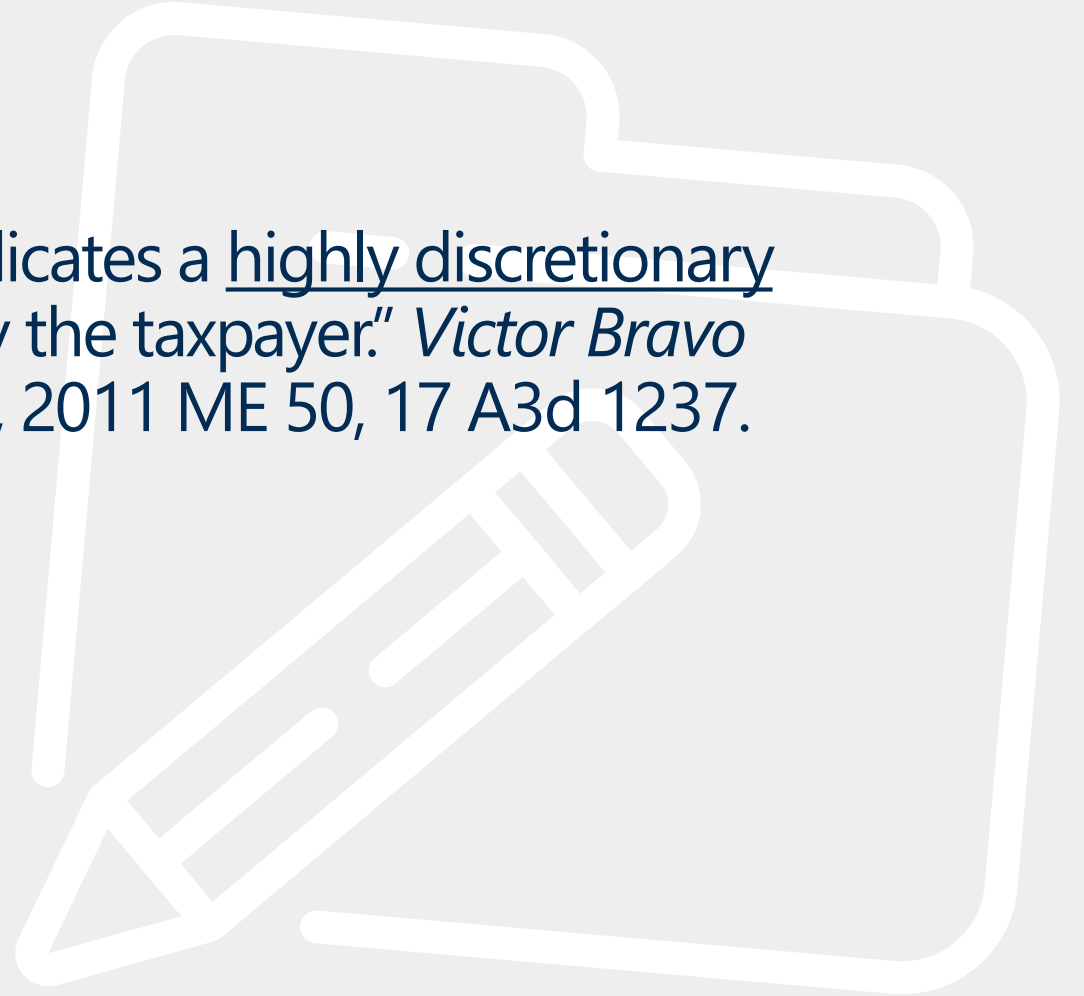
Interest accrues automatically, without being assessed by the assessor, and is recoverable by the assessor in the same manner as if it were a tax assessed under this Title...

If the failure to pay a tax when required is explained to the satisfaction of the assessor, the assessor may abate or waive the payment of all or any part of that interest....



## Example - Interest

The language of section 186 “indicates a highly discretionary standard that is not easily met by the taxpayer.” *Victor Bravo Aviation, LLC v. State Tax Assessor*, 2011 ME 50, 17 A3d 1237.





## Recent Case Highlights

*Goggin v. State Tax Assessor*, 2018 ME 111, 191 A3d 341,  
08/02/2018

*Warnquist v. State Tax Assessor*, 2019 ME 19, 201 A3d  
602, 01/29/2019

*State Tax Assessor v. Kraft Foods Group, Inc. et al.* --- A3d  
----, 2020 ME 81



# State Judicial Branch of Maine



**Dockets and Decisions**  
**[www.courts.maine.gov/index.shtml](http://www.courts.maine.gov/index.shtml)**



# Regulations



## Regulations (Rules)

Regulations are agency drafted rules based on agency expertise.

In general, regulations clarify statutes.

36 M.R.S. § 112 & 5 M.R.S. §§ 8051 - 8074  
(Administrative Procedure Act)



# Rulemaking

Why?

## General Process

- Drafting
- Preliminary Approval
- Notice & Comment
- Final Adoption





## Regulations - Recap

31 different MRS rules:

[www.maine.gov/revenue/rules/](http://www.maine.gov/revenue/rules/)

DAFS Regulatory Agenda:

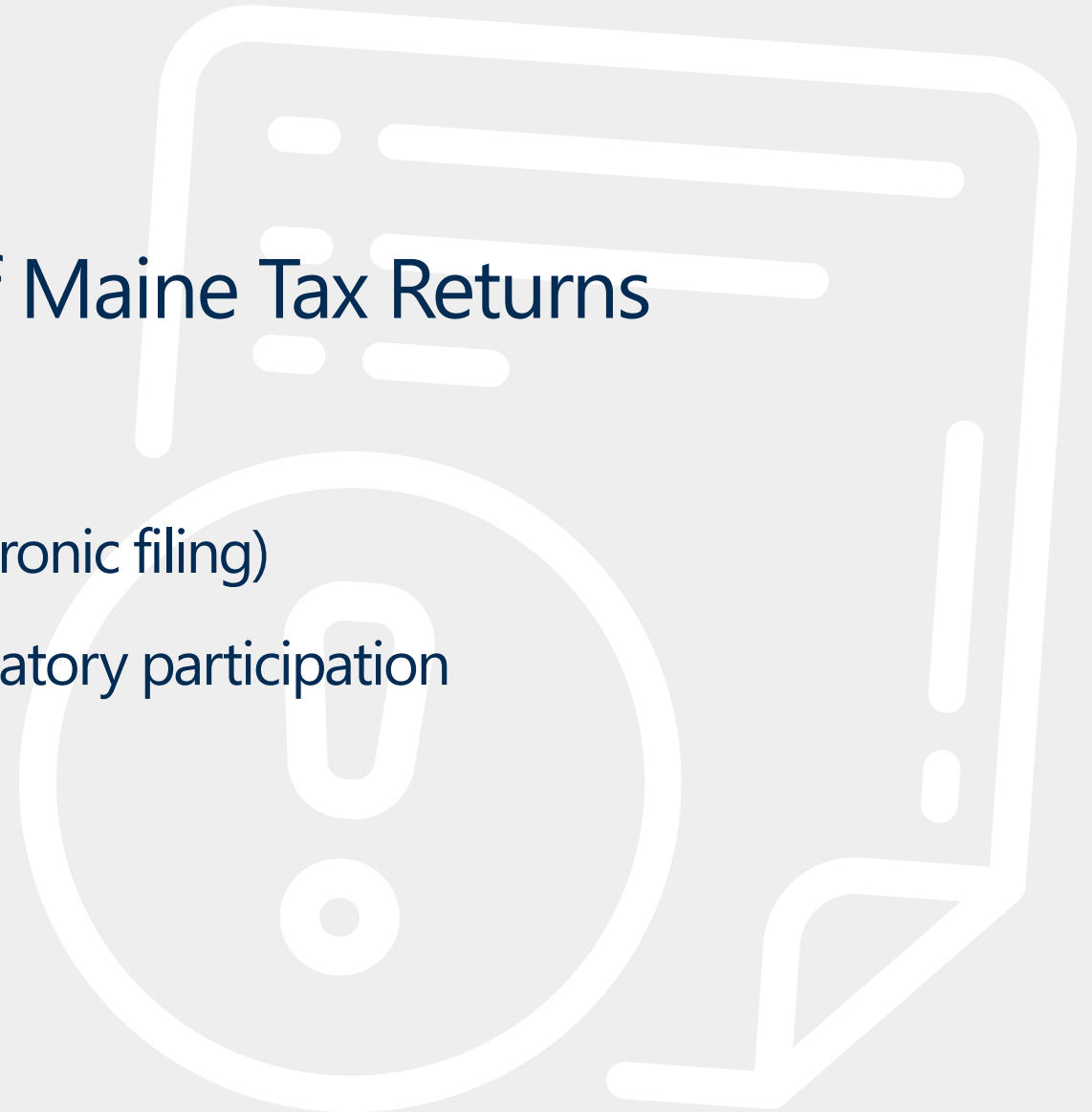
[www.maine.gov/sos/cec/rules/agendas.html](http://www.maine.gov/sos/cec/rules/agendas.html)



## Notable Rule

### MRS Rule 104 – Filing of Maine Tax Returns

- General filing requirements
- Mandatory participation (electronic filing)
- Request for waiver from mandatory participation
- Penalties
- Software specifications
- Application date



# Administrative Authority



## Administrative Authority

MRS Publications, Tax Bulletins, Tax Alerts,  
FAQs, Taxpayer Bill of Rights

[www.maine.gov/revenue/publications/index.html](http://www.maine.gov/revenue/publications/index.html)

To register for Tax Alerts:

<https://portal.maine.gov/taxalert/requestForm>



# Other Authority?







## MRS Mission Statement

The mission of Maine Revenue Services is to fairly and efficiently administer the tax laws of the State of Maine, while maintaining the highest degree of integrity and professionalism.

# Addressing Tax Issues



# Addressing Tax Issue

Ask MRS or visit MRS website

Advisory Rulings

Offer in Compromise

Voluntary Disclosure Agreement

Payment Plans

Reconsideration/Appeals Process





# FAQs on MRS Website



Forms Home

Alphabetical listing by Tax Type or Program Name

Electronic Request Form

List of Forms and Due Dates

Publications & Applications

Maine Tax Alert

Income Tax Guidance Documents

Sales, Use and Service Provider Tax Bulletins & Guidance Documents

Property Tax Bulletins

FAQs

## Frequently Asked Questions

Please select a category:

- [Coronavirus \(COVID-19\)](#)
- [1040 FastFile](#)
- [Audit Q & A](#)
- [Corporate Income Tax](#)
- [Educational Opportunity Tax Credit](#)
- [Estate Tax](#)
- [Forms 1099G and 1099-INT](#)
- [Fuel Tax](#)
- [Homestead Exemption Program](#)
- [Income Tax Withholding](#)
- [Individual Income Tax](#)
- [Insurance Taxes](#)
- [Marketplace](#)
- [Pass-through Entity Withholding](#)
- [Pine Tree Development Zones](#)
- [Real Estate Transfer Tax Database](#) (for municipalities)
- [Real Estate Transfer Tax Database](#) (for originators)
- [Real Estate Withholding](#)
- [Sales, Use, and Service Provider Tax](#)



# Advisory Rulings

What are advisory rulings?

Named and un-named

Authority – 5 M.R.S. § 9001 and MRS Rule 110

1. Written request
2. Written response
3. Where to submit?



# Offers in Compromise (Settlements)

## 36 M.R.S. § 143 – Compromise of Tax Liability

- "...doubt as to liability or doubt as to collectability, or both."
- The decision of the assessor to reject an offer in compromise is not subject to review under section 151.

Settlement offer instructions:

[www.maine.gov/revenue/taxes/compliance/](http://www.maine.gov/revenue/taxes/compliance/)



# Voluntary Disclosure Agreements

Non-filers and current filers

## Benefits?

- Penalty abatement
- Limited look-back period
- Compliant
- Avoid audit roulette

Applications available at:

[www.maine.gov/revenue/forms/general/generalforms.htm](http://www.maine.gov/revenue/forms/general/generalforms.htm)



## Payment Plans

Call Compliance Division

- **(207) 621-4300 (Income Tax)**
- **(207) 624-9595 (Other Taxes)**

Other questions? Ask MRS:  
[www.maine.gov/revenue/contact.html](http://www.maine.gov/revenue/contact.html)





# Reconsideration/Appeals



# Reconsideration/Appeals Process

36 M.R.S. § 151(1) - Appeals: Petition for reconsideration.



**A person who is subject to an assessment by the State Tax Assessor or entitled by law to receive notice of a determination of the assessor and who is aggrieved as a result of that action may request in writing, within 60 days after receipt of notice of the assessment or the determination, reconsideration by the assessor of the assessment or the determination.**



# Reconsideration Process

- 1. Notice of Assessment or Certain Other Determination**
- 2. Taxpayer submits written petition (within 60 days)**
- 3. Administrative review**
- 4. Decision on reconsideration (final agency action)**

**Timing?**

Taxpayer Bill of Rights:

[www.maine.gov/revenue/about/taxpayer-rights](http://www.maine.gov/revenue/about/taxpayer-rights)



# Issues in Reconsideration


- **Untimely (60 days)**
- **Payment plan or Settlement offer? (interest)**
- **Type of notice?**
- **Exhaust administrative remedies**
- **Unnecessary delay (e.g., documentation)**

**Interest??**



# Petition for Reconsideration Form

Available at: [www.maine.gov/revenue/tax-return-forms/general-forms](http://www.maine.gov/revenue/tax-return-forms/general-forms)

	<b>Petition for Reconsideration</b>	<b>Mail To:</b> Division Reconsideration Maine Revenue Services P.O. Box 1060 Augusta, ME 04332-1060
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**READ INSTRUCTIONS (below).** Petition must be postmarked (if mailed) or delivered to Maine Revenue Services within 60 days from your receipt of the Notice of Assessment, Denial of Refund, or other notice of determination.

**1. Petitioner Information** (petitioner(s) must sign and date this form in Section 5 below)

Petitioner name		Social security number
Additional petitioner name (if applicable)		Social security number
Business name (if petitioner is a business)		Federal identification number
Mailing address		City, state, zip
Country (if not United States)	Email address (optional)	Telephone number

**2. Disputed Period and Tax Type**

PERIOD: Tax Year(s) \_\_\_\_\_ OR Period Beginning \_\_\_\_/\_\_\_\_/\_\_\_\_ and Ending \_\_\_\_/\_\_\_\_/\_\_\_\_

TAX TYPE:  Corporate Income       Sales/Use/Service Provider  
 Individual Income       Business Equipment Tax Reimbursement or Exemption  
 Withholding       Other (describe) \_\_\_\_\_

**3. Disputed Items and Amounts**

Disputed Item	Disputed Amount	Disputed Item	Disputed Amount
<input type="checkbox"/> Disputed Tax	\$ _____	<input type="checkbox"/> Disputed Denial of Refund or Reimbursement	\$ _____

# Confidentiality



# Confidentiality

## 36 M.R.S. § 191 – Confidentiality

**Basic Prohibition....**Except as otherwise provided by law, it is unlawful for any person who, pursuant to this Title, has been permitted to receive or view any portion of the original or a copy of any report, return or other information provided pursuant to this Title to divulge or make known in any manner any information set forth in any of those documents or obtained from examination or inspection under this Title of the premises or property of any taxpayer...

## Federal rules?

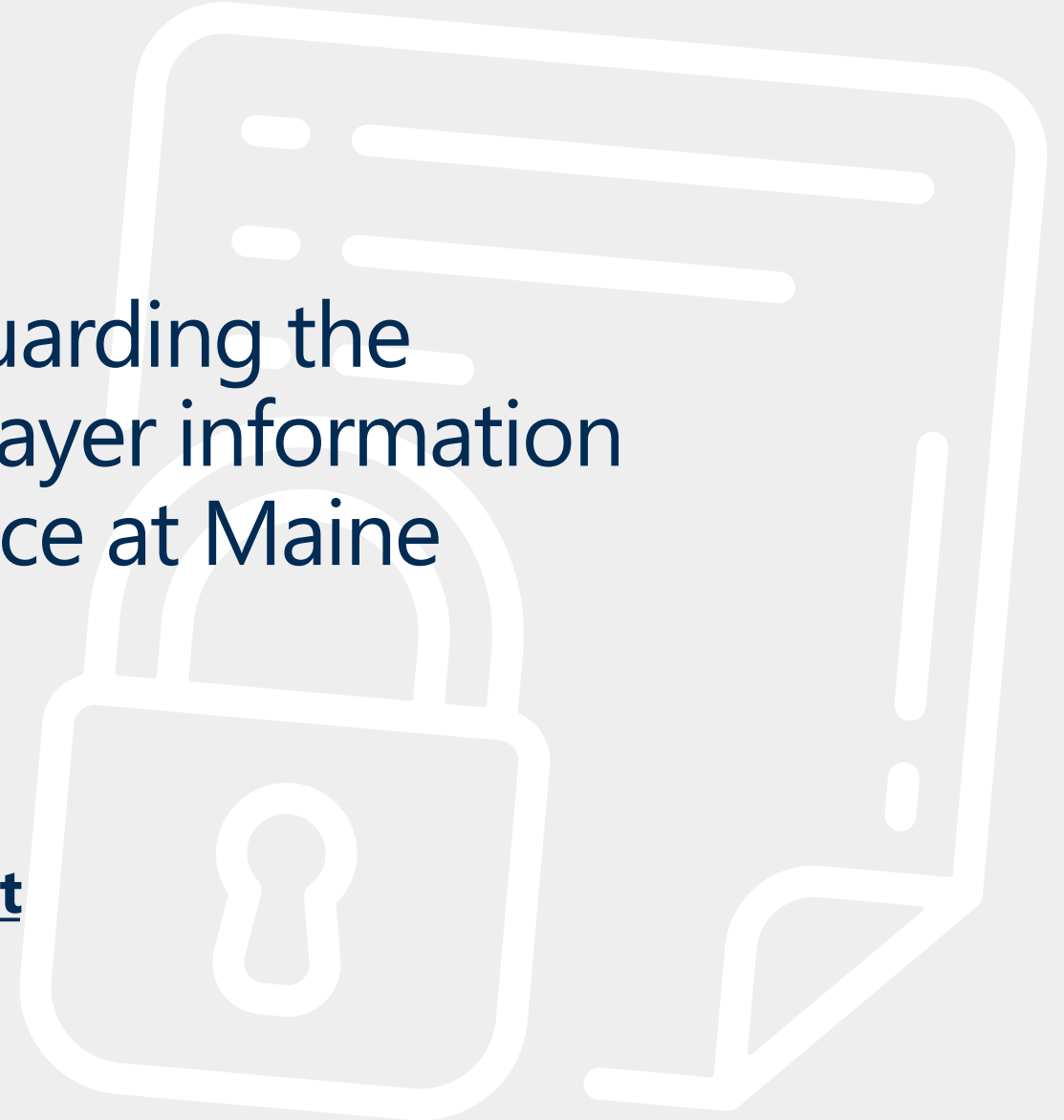


## MRS Values

*Confidentiality:* Safeguarding the confidentiality of taxpayer information is of utmost importance at Maine Revenue Services.

MRS Values:

[www.maine.gov/revenue/about](http://www.maine.gov/revenue/about)







# Confidentiality Exemptions

Type of Information? Public information?



**36 M.R.S. § 191(2)(I) - The disclosure of information acquired pursuant to Part 2 and chapter 367, except for information identified as confidential within those provisions**



# Confidentiality Exemptions

Interagency? *See* 36 M.R.S. § 191

Duly authorized representative?



**36 M.R.S. § 191(2)(A)** - The delivery to a ***taxpayer or the taxpayer's duly authorized representative*** of a certified copy of any return, report or other information filed by the taxpayer pursuant to this Title...



# Duly Authorized Representative

## Maine Power of Attorney (POA) forms

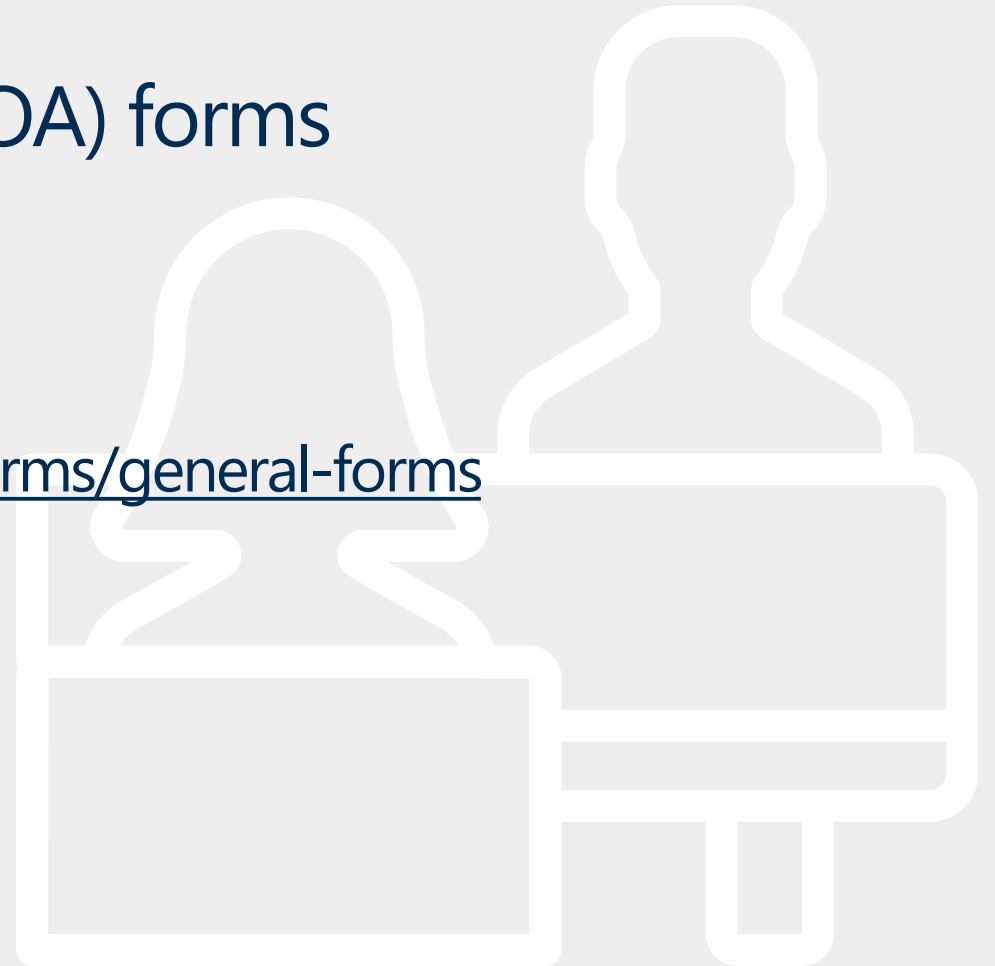
- Form 2848-ME
- Form 2848-ME-L (limited)
- Petition for Reconsideration Form

[www.maine.gov/revenue/tax-return-forms/general-forms](http://www.maine.gov/revenue/tax-return-forms/general-forms)

Federal Form 2848?

Non-attorney ok?

Other representatives?



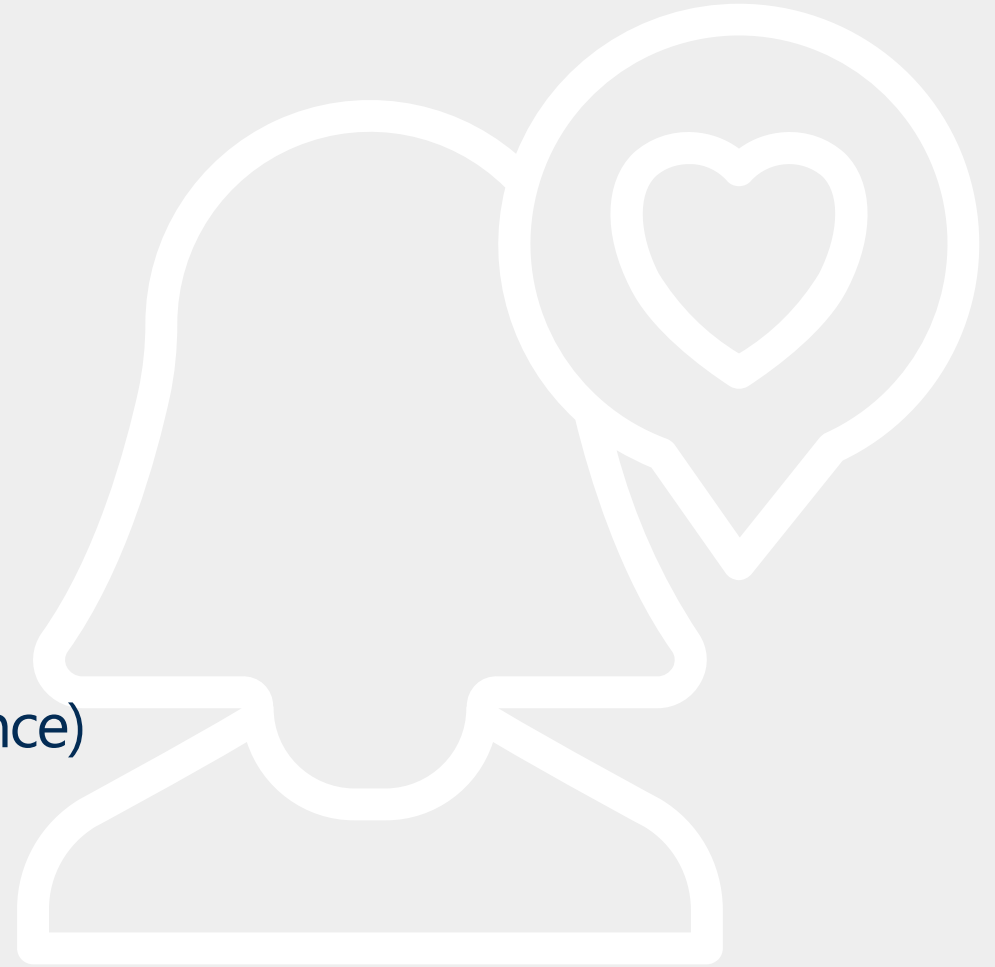
# Careers at MRS



# Careers at MRS

## Benefits?

- Public Service
- Federal student loan forgiveness
- Challenging and diverse work
- Continuing education (tuition assistance)
- MePERS retirement plan



Sign up for MRS Career Listserv:  
<https://portal.maine.gov/taxalert/requestForm>



# Closing Comments





# Thank You

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