STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2017-3

[INDIVIDUAL JOINT TAXPAYERS],

Petitioners

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Individual Taxpayers (the "Petitioners")] seek an order from the Board striking from all public records any reference to certain Maine income tax liens, the notices of which were recorded in the [Maine] County Registry of Deeds by Maine Revenue Services. Because the relief requested is beyond the Board's authority to grant, we deny the appeal.

I. Background

At all relevant times, [the Petitioners] were resident individuals of the State of Maine, filing their income tax returns using a married-joint filing status. On various dates between [date, year 4] and [date, year 9], Maine Revenue Services ("MRS") caused notices (the "Notices") of certain income tax liens for tax years [year 1] through [year 5] (the "Liens") to be recorded in the [Maine] County Registry of Deeds (the "Registry"). As of the date of this appeal, MRS had released each of the Liens. Even though the Liens have been released, however, the history of the Liens having been recorded is still noted on the [Petitioners]' credit reports and is still considered negatively by their lenders.

On appeal, the [Petitioners] contend that the Lien Notices were "inaccurate and erroneously filed." In their Statement of Appeal, the [Petitioners] request that the "liens be withdrawn forthwith and documentation supporting their withdrawal be provided to us." In their

subsequent submissions to the Board, the [Petitioners] clarified their request: "that a *writ of mandamus*[1] be issued ordering the liens in question be stricken from all public records . . . ."

MRS argues that because the validity of MRS's lien notices is not expressly made subject to reconsideration under 36 M.R.S. § 151, the Board is without jurisdiction to consider the [Petitioners]' appeal and the appeal should be dismissed without further consideration.

It is the [Petitioners]' burden to show that, more likely than not, they are entitled to the relief requested on appeal. 36 M.R.S. § 151-D(10)(F).

II. Discussion

Pursuant to 36 M.R.S. § 151-D, the Board is authorized to decide "[a]ppeals of tax matters arising under [chapter 7 of Title 36 (Uniform Administrative Provisions) (36 M.R.S. §§ 111-194-C)]." *Id.* § 151-D(10), (10)(I)(1-4). The decisions of the Board determine the legal rights between the parties to an appeal, but do not command any action by either party.[2] A writ of mandamus, however,

> "compel[s] governmental performance of a strictly ministerial act, that the applicant, otherwise without remedy, is entitled to have performed. . . . When the law requires the public officer to do a specified act, in a specified way, upon a conceded state of facts, without regard to his own judgment as to the propriety of the act, and with no power to exercise discretion, the duty is ministerial in character and performance may be compelled by mandamus if there is no other remedy."

Casco N. Bank, N.A. v. Board of Trustees of Van Buren Hosp. Dist., 601 A.2d 1085, 1087 (Me. 1992) (citations omitted). By statute, jurisdiction over the "extraordinary" writ of mandamus is vested in the Maine Superior and Supreme Judicial Courts. 14 M.R.S. § 5301.

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[1] A writ of mandamus is "[a] writ issued by a court to compel the performance of a particular act by a lower court or a governmental officer or body, usu. to correct a prior action or failure to act." Black's Law Dictionary 1046-47 (9th ed. 2009).

[2] For example, in an appeal from an MRS reconsideration decision under 36 M.R.S. § 151, the Board is only authorized to "conduct a de novo hearing and make a de novo determination of the merits of the case." *Id.* § 151(2)(G).

It is apparent that we are without statutory authority to issue a writ of mandamus, even if it were shown that such relief was appropriate. Accordingly, because we are unable to provide the [Petitioners] with the relief they seek, we hereby dismiss the [Petitioners]' appeal as beyond our authority to redress. We do not reach any of the other issues raised by the parties in this matter.

III. DECISION

The Board finds that it is without authority to grant the relief sought by the [Petitioners] on appeal. Consequently, the appeal is dismissed.

The Board may, in limited circumstances, reconsider its decision on any appeal. If either party wishes to request reconsideration, that party must file a written request with the Board within 20 days of receiving this decision. Contact the Appeals Office at 207-287-2864 or see the Board's rules, available at http://www.maine.gov/boardoftaxappeals/lawsrules/, for more information on when the Board may grant reconsideration. If no motion for reconsideration is filed within 20 days of the date of this proposed decision, it will become the Board's final administrative action. If either party wishes to appeal the Board's decision in this matter to the Maine Superior Court, that party must do so within 60 days of receiving this decision.

Issued by the Board: October 30, 2017

DISSENT by Board Member [name]

I respectfully dissent from the decision reached by the Board, and would instead reach the merits of the [Petitioners]' appeal.

In relevant part, 36 M.R.S. § 175-A permits MRS to record a lien notice where a tax "is not paid when due and no further administrative or judicial review of the assessment is available pursuant to law." On appeal, the [Petitioners] do not challenge the accuracy or validity of any assessment against them, and no evidence was presented showing that an assessment was ever made against them. Rather, the [Petitioners] argue that the Lien Notices were "inaccurate and erroneously filed" with the Registry by MRS. The issue of whether MRS complied with section 175-A in recording the Lien Notices is clearly presented. The fact that the [Petitioners] requested a specific extraordinary writ as a remedy, one which we are unable to provide, does not prevent us from making a determination on the merits in this controversy.

Were the [Petitioners] to show that MRS recorded lien notices against them without complying with section 175-A, then we would make that determination in the form of a written decision. That is our function. *See* 36 M.R.S. § 151-D(1), (10)(I)(1-4). The [Petitioners] would then be able to rehabilitate their credit record by presenting our decision to their lenders or by recording our decision in the Registry. *See e.g.*, 33 M.R.S. §§ 172(12) (corrective deeds), 203 (acknowledgment).

I would allow the [Petitioners] the opportunity to be heard on the merits of their appeal.

Dissent issued: October 30, 2017