

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 792

H.P. 601

House of Representatives, February 4, 1997

An Act Concerning Technical Changes to the Tax Laws.

(EMERGENCY)

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative TRIPP of Topsham.

Cosponsored by Representatives: DUNLAP of Old Town, GREEN of Monmouth, Senator: RUHLIN of Penobscot.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4

6 Whereas, delay in making technical changes to the tax laws
would interfere with administration of those laws; and

8 Whereas, legislative action is immediately necessary in
order to ensure continued and efficient administration of the tax
10 laws; and

12 Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
14 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
16 safety; now, therefore,

18 Be it enacted by the People of the State of Maine as follows:

20 Sec. 1. 36 MRSA §184-A is enacted to read:

22 §184-A. Intentional evasion of tax

24 1. Tax amount under \$2,000. Any person who intentionally
attempts in any manner to evade or defeat any tax in an amount of
26 \$2,000 or less imposed by this Title or the payment of the
assessed tax, in addition to any other penalties provided by law,
28 is guilty of a Class D crime, except that violation of this
subsection is a Class C crime if the person has a prior
30 conviction for violation of this section, section 184 or 5332.

32 2. Tax amount over \$2,000. Any person who intentionally
attempts in any manner to evade or defeat any tax in an amount
34 over \$2,000 imposed by this Title or the payment of the assessed
tax, in addition to any other penalties provided by law, is
36 guilty of a Class C crime, except that violation of this
subsection is a Class B crime if the person has a prior
38 conviction for violation of this section, section 184 or 5332.

40 3. Date of prior conviction. For purposes of this section,
the date of prior conviction under this section must precede the
42 commission of the offense being enhanced by 10 years or less.
The date of conviction is deemed the date sentence is imposed.

44

46 Sec. 2. 36 MRSA §193, as enacted by PL 1995, c. 639, §7, is
amended to read:

48 §193. Returns; declaration covering perjury; submission of
50 returns and funds by electronic means

2 Any return, report or other document required to be made
3 pursuant to this Title must contain a declaration, in a form
4 prescribed by the State Tax Assessor, that the statements
5 contained in the return, report or other document are true and
6 made under the penalties of perjury. The assessor may allow or
7 require the filing of a return or document by electronic data
8 submission or by telephone. The assessor may also allow or
9 require the payment of a tax or the refund of a tax by the
10 electronic transfer of funds. An electronic funds transfer
11 allowed or required by the assessor pursuant to this section is
12 considered a return. The assessor may adopt rules to establish
13 procedures necessary to implement the provisions of this section.

14 Sec. 3. 36 MRSA §576, as amended by PL 1985, c. 99, is
15 further amended to read:

16 **§576. Powers and duties**

17
18 The State Tax Assessor shall determine the average annual
19 net wood production rate for each forest type described in
20 section 573, subsections 5 to 7, in each county or region to be
21 used in determining valuations applicable to forest land under
22 this subchapter, on the basis of the surveys of average annual
23 growth rates applicable in the State made from time to time by
24 the United States Forest Service or by the Maine Forestry Bureau.
25 The growth rate surveys shall must be reduced by a the percentage
26 discount factor determined by the State Tax Assessor pursuant to
27 prescribed by section 576-B to reflect the growth which that can
28 be extracted on a sustained basis. The rates shall be determined
29 after passage of this subchapter, and when determined shall
30 remain in effect without change for each county through the
31 property tax year ending March 31, 1975. In 1974 and in every
32 10th year thereafter, the State Tax Assessor shall review and set
33 such rates for the following 10-year period in the same manner.
34

35 The State Tax Assessor shall determine the average stumpage
36 value for each forest type described in section 573, subsections
37 5 to 7, applicable in each county, or in such alternative forest
38 economic regions as he may designate the assessor designates,
39 after passage of this subchapter and in each year thereafter,
40 taking into consideration the prices upon sales of sound standing
41 timber of that forest type in that area during the previous
42 calendar year, and such any other appropriate considerations as
43 he ~~deems~~ appropriate.
44

45 The proportions of the various species making up the type
46 are to be used in the computations of the average annual net wood
47 production rates and average stumpage values for each forest type
48 and the proportions of the various products are to be used in the
49 computations of average stumpage values.
50

2 After the State Tax Assessor has made the foregoing
determinations, he the assessor shall apply a the capitalization
4 rate as determined by him pursuant to prescribed by section
576-B, to the value of the annual net wood production to
6 determine the 100% valuation per acre for each forest type for
each area and shall state the wood production rates and values
8 used to compute same those rates and values.

10 The State Tax Assessor shall hold one or more public
hearings, upon the foregoing matters to be determined, shall
12 provide for a transcript thereof, and shall issue a rule or rules
stating those determinations on or before April 15, 1985, and on
14 ~~or before October 1st each year thereafter.~~

16 The State Tax Assessor shall certify and transmit such rules
to the municipal assessors of each municipality with respect to
18 forest land therein on or before April 1st of each year.

20 Sec. 4. 36 MRSA §576-B, as amended by PL 1985, c. 779, §80,
is repealed and the following enacted in its place:

22 **§576-B. Discount factor and capitalization rate**

24 The percentage factor by which the growth rates set by the
26 State Tax Assessor pursuant to section 576 must be reduced to
reflect the growth that can be extracted on a sustained basis is
28 10%. The capitalization rate applied to the value of the annual
net wood production pursuant to section 576 is 8.5%.

30 Sec. 5. 36 MRSA §1754-B, sub-§1, ¶G, as enacted by PL 1995, c.
32 640, §3, is amended to read:

34 G. Every seller of tangible personal property or taxable
services that has a substantial physical presence in this
36 State sufficient to satisfy the requirements of the due
process and commerce clauses of the United States
38 Constitution. The following activities do not constitute a
substantial physical presence for the purpose of this
40 paragraph:

42 (1) Solicitation of business in this State through
catalogs, flyers, telephone or electronic media when
44 delivery of ordered goods is ~~affected~~ effected by the
United States mail or by an interstate 3rd-party common
46 carrier;

48 (2) Attending trade shows, seminars or conventions in
50 this State;

2 (3) Holding a meeting of a corporate board of
directors or shareholders or holding a company retreat
or recreational event in this State;

4 (4) Maintaining a bank account or banking relationship
6 in this State; or

8 (5) Using a vendor in this State for printing, drop
shipping or telemarketing services.

10 **Sec. 6. 36 MRSA §5215, sub-§1, as amended by PL 1993, c. 672,**
12 **§1 and affected by §2, is further amended to read:**

14 1. **Credit allowed.** A taxpayer, other than a public utility
as defined by Title 35-A, section 102, is allowed a credit to be
16 computed as provided in this section against the tax imposed by
this Part, subject to the limitations contained in subsection 3.
18 The amount of the credit equals the qualified federal credit, as
defined in subsection 2, for taxable years beginning on or after
20 January 1, 1979, except that a credit may be taken with respect
to used property, and may not be allowed with respect to an
22 excluded investment.

24 **Sec. 7. 36 MRSA §5215, sub-§2, ¶A, as amended by PL 1993, c.**
26 **672, §1 and affected by §2, is further amended to read:**

28 A. "Qualified federal credit" means, with respect to any
taxable year, that portion of the credit allowed by the
29 Internal Revenue Code of 1954, Section 38(b)(1), as of
30 December 31, 1985, that is directly and solely attributable
to qualified investment with a situs location in this State.

32 **Sec. 8. 36 MRSA §5215, sub-§2, ¶E is enacted to read:**

34 E. "Used property" means property that is originally placed
36 in service by the taxpayer outside of this State. The cost
38 of property used by the taxpayer outside of this State and
40 then placed into service in this State on or after January
42 1, 1997 is the original cost of the property to the
taxpayer, minus the straight-line depreciation allowable for
44 the tax years or portions of the tax years during which the
taxpayer used the property outside of this State. The cost
46 of property used by the taxpayer outside of this State and
then placed into service in this State before to January 1,
1997 is the original cost of the property.

48 **Sec. 9. 36 MRSA §5219-E, sub-§1, ¶B, as amended by PL 1995, c.**
368, Pt. FFF, §1 and affected by §3, is further amended to read:

2 B. "Investment credit base" means the total original basis,
without adjustment, for federal income tax purposes, of the
4 taxpayer of all machinery and equipment placed in service
for the first time in this State by the taxpayer or other
6 person during any of the prior 5 taxable years, except in
taxable years ending in 1995, the prior 6 taxable years,
8 excluding the basis of machinery and equipment placed in
service in this State prior to January 1, 1989. In the case
10 of a combined report, the term investment credit base means
the sum of the investment credit bases for all corporations
12 included in the report.

14 If the taxpayer is reimbursed pursuant to chapter 915 for
100% of the property taxes assessed during the taxable year
16 against all any of the machinery and equipment that
constitutes eligible property as defined in section 6651,
18 subsection 1, that machinery and equipment may not be
included in the investment credit base for that taxable
20 year. The term "taxable year" means the taxable year for
income tax purposes of the taxpayer.

22 **Sec. 10. 36 MRSA §5219-K, sub-§§3 and 4, as enacted by PL**
1995, c. 368, Pt. GGG, §7, are amended to read:

24 **3. Limitation on credit allowed.** The credit allowed under
26 this section is limited to 100% of a corporation's first \$25,000
of tax due, as determined before the allowance of any credits,
28 plus 75% of the corporation's tax due, as determined in excess of
\$25,000. The State Tax Assessor shall adopt rules similar to
30 those authorized under Section 38(c){2} (3)(B) of the Code for
purposes of apportioning the \$25,000 among members of a
32 controlled group.

34 **4. Corporations filing combined return.** In the case of
corporations filing a combined return, a credit generated by an
36 individual member corporation under the provisions of this
section must first be applied against the tax due attributable to
38 that company under this ~~chapter~~ Part. A member corporation with
an excess research and development credit may apply its excess
40 credit against the tax due of another group member to the extent
that that other member corporation can use additional credits
42 under the limitations of subsection 3. Unused, unexpired credits
generated by a member corporation may be carried over from year
44 to year by the individual corporation that generated the credit,
subject to the limitation in subsection 5.

46 **Sec. 11. 36 MRSA §5330, as amended by PL 1989, c. 880, Pt. D,**
48 **§2, is repealed.**

