

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 234

S.P. 70

In Senate, February 5, 2013

### **An Act To Provide Tax Treatment Consistency for Limited Liability Companies and S Corporations**

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Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in dark ink, appearing to read "D M Grant", is positioned above the printed name of the Secretary of the Senate.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator WOODBURY of Cumberland.  
Cosponsored by Representative NELSON of Falmouth and  
Senators: HASKELL of Cumberland, HILL of York, KATZ of Kennebec, Representatives:  
BENNETT of Kennebunk, CHASE of Wells, HOBBS of Saco, KNIGHT of Livermore  
Falls, STANLEY of Medway.

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

2 **Sec. 1. 36 MRSA §5122, sub-§1, ¶FF**, as amended by PL 2011, c. 644, §14, is  
3 further amended to read:

4 FF. For taxable years beginning in 2011 and 2012:

5 (1) An amount equal to the depreciation deduction claimed by the taxpayer  
6 under the Code, Section 168(k) with respect to property placed in service in the  
7 State during the taxable year for which a credit is claimed under section  
8 5219-GG; and

9 (2) An amount equal to the net increase in depreciation attributable to the  
10 depreciation deduction claimed by the taxpayer under the Code, Section 168(k)  
11 with respect to property for which a credit is not claimed under section 5219-GG;  
12 ~~and~~

13 **Sec. 2. 36 MRSA §5122, sub-§1, ¶GG**, as enacted by PL 2011, c. 644, §15 and  
14 affected by §33, is amended to read:

15 GG. The amount claimed as a deduction in determining federal adjusted gross  
16 income that is used to calculate the credit for Maine fishery infrastructure investment  
17 under section 5216-D; ~~and~~

18 **Sec. 3. 36 MRSA §5122, sub-§1, ¶HH** is enacted to read:

19 HH. For income tax years beginning on or after January 1, 2014, a resident  
20 individual's proportional share of the amount of any creditable income tax deducted  
21 pursuant to Section 703 of the Code by a pass-through entity of which the individual  
22 is a member when the individual claims the credit allowed by section 5217-A,  
23 subsection 2, paragraph B with respect to those taxes.

24 **Sec. 4. 36 MRSA §5217-A**, as amended by PL 2003, c. 673, Pt. JJ, §4 and  
25 affected by §6, is repealed and the following enacted in its place:

26 **§5217-A. Income tax paid to other taxing jurisdiction**

27 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
28 following terms have the following meanings.

29 A. "Creditable income tax" means a tax imposed by another state of the United  
30 States, a political subdivision of any such state, the District of Columbia or any  
31 political subdivision of a foreign country that is analogous to a state of the United  
32 States with respect to income subject to tax under this Part that is derived from  
33 sources in that taxing jurisdiction. In determining whether income is derived from  
34 sources in another jurisdiction, the assessor may not employ the law of the other  
35 jurisdiction but shall instead assume that a statute equivalent to section 5142 applies  
36 in that jurisdiction.

37 B. "Member" has the same meaning as in section 5250-B, subsection 1, paragraph A.

C. "Pass-through entity" has the same meaning as in section 5250-B, subsection 1, paragraph C.

**2. Credit.** For tax years beginning on or after January 1, 2014, a resident individual is allowed a credit against the tax otherwise due under this Part, excluding the tax imposed by section 5203-C, for the amount of creditable income tax for the taxable year imposed on:

A. That individual; or

B. A pass-through entity of which the individual is a member to the extent the creditable income tax is imposed on that member's distributive share or pro rata share, as the case may be, of the pass-through entity's income.

**3. Limitation.** The credit allowed under this section for any of the specified taxing jurisdictions may not exceed the proportion of the tax otherwise due under this Part excluding the tax imposed by section 5203-C, that the amount of the taxpayer's Maine adjusted gross income derived from sources in that taxing jurisdiction bears to the taxpayer's entire Maine adjusted gross income; except that, when a credit is claimed for taxes paid to both a state and a political subdivision of a state, the total credit allowable for those taxes does not exceed the proportion of the tax otherwise due under this Part excluding the tax imposed by section 5203-C, that the amount of the taxpayer's Maine adjusted gross income derived from sources in the other state bears to the taxpayer's entire Maine adjusted gross income.

**Sec. 5. Application.** This Act applies to tax years beginning on or after January 1, 2014.

## SUMMARY

This bill allows a member of a pass-through entity, such as a limited liability company or S corporation, to receive an income tax credit against taxes imposed on that member's distributive share or pro rata share of the pass-through entity's income, and ensures that the amount used to calculate the income tax credit for certain members of pass-through entities cannot also be used as a deduction from income. This bill applies to tax years beginning on or after January 1, 2014.