

# MAINE STATE LEGISLATURE

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# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

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Legislative Document

No. 138

H.P. 96

House of Representatives, January 22, 2015

**An Act To Update References to the United States Internal Revenue Code of 1986 Contained in the Maine Revised Statutes, Decouple Federal Bonus Depreciation Deductions and Create a Maine Capital Investment Credit**

(EMERGENCY)

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Reference to the Committee on Appropriations and Financial Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative ROTUNDO of Lewiston. (GOVERNOR'S BILL)  
Cosponsored by Senator HAMPER of Oxford.

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

3           **Whereas,** state tax law needs to be updated to conform to federal law before the 90-  
4 day period expires to avoid delay in the processing of income tax returns for 2014; and

5           **Whereas,** legislative action is immediately necessary to ensure continued and  
6 efficient administration of the state income tax and certain other state taxes; and

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

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

12           **Sec. 1. 36 MRSA §111, sub-§1-A,** as amended by PL 2013, c. 472, §1 and  
13 affected by §2, is further amended to read:

14           **1-A. Code.** "Code" means the United States Internal Revenue Code of 1986 and  
15 amendments to that Code as of December 31, ~~2013~~ 2014.

16           **Sec. 2. 36 MRSA §5122, sub-§1, ¶GG,** as amended by PL 2013, c. 368, Pt. TT,  
17 §3, is further amended to read:

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

21           **Sec. 3. 36 MRSA §5122, sub-§1, ¶HH,** as corrected by RR 2013, c. 1, §52, is  
22 amended to read:

23           HH. For taxable years beginning in 2013:

24                   (1) An amount equal to the net increase in depreciation attributable to the  
25 depreciation deduction claimed by the taxpayer under the Code, Section 168(k)  
26 with respect to property placed in service in the State during the taxable year for  
27 which a credit is claimed under section 5219-JJ for that taxable year; and

28                   (2) An amount equal to the net increase in depreciation attributable to the  
29 depreciation deduction claimed by the taxpayer under the Code, Section 168(k)  
30 with respect to property for which a credit is not claimed under section 5219-JJ;  
31 and

32           **Sec. 4. 36 MRSA §5122, sub-§1, ¶II** is enacted to read:

33           II. For taxable years beginning in 2014:

34                   (1) An amount equal to the net increase in depreciation attributable to the  
35 depreciation deduction claimed by the taxpayer under the Code, Section 168(k)

1 with respect to property placed in service in the State during the taxable year for  
2 which a credit is claimed under section 5219-MM for that taxable year; and

3 (2) An amount equal to the net increase in depreciation attributable to the  
4 depreciation deduction claimed by the taxpayer under the Code, Section 168(k)  
5 with respect to property for which a credit is not claimed under section  
6 5219-MM.

7 **Sec. 5. 36 MRSA §5122, sub-§2, ¶LL**, as repealed and replaced by PL 2013, c.  
8 588, Pt. A, §46 and affected by §47, is amended to read:

9 LL. To the extent included in federal adjusted gross income and to the extent  
10 otherwise subject to Maine income tax, an amount equal to military compensation  
11 earned during the taxable year for service performed outside of this State pursuant to  
12 written military orders:

13 (1) For active duty service in the active components of the United States Army,  
14 Navy, Air Force, Marines or Coast Guard by a service member whose permanent  
15 duty station during such service is located outside of this State; and

16 (2) For active duty service in the active or reserve components of the United  
17 States Army, Navy, Air Force, Marines or Coast Guard or in the Maine National  
18 Guard by a service member in support of a federal operational mission or a  
19 declared state or federal disaster response when the orders are either at federal  
20 direction or at the direction of the Governor of this State; ~~and~~

21 **Sec. 6. 36 MRSA §5122, sub-§2, ¶MM**, as enacted by PL 2013, c. 368, Pt. TT,  
22 §8, is amended to read:

23 MM. For taxable years beginning on or after January 1, 2014, an amount equal to the  
24 net increase in the depreciation deduction allowable under the Code, Sections 167  
25 and 168 that would have been applicable to that property had the depreciation  
26 deduction under the Code, Section 168(k) not been claimed with respect to such  
27 property placed in service during the taxable year beginning in 2013 for which an  
28 addition was required under subsection 1, paragraph HH, subparagraph (2) for the  
29 taxable year beginning in 2013.

30 Upon the taxable disposition of property to which this paragraph applies, the amount  
31 of any gain or loss includable in federal adjusted gross income must be adjusted for  
32 Maine income tax purposes by an amount equal to the difference between the  
33 addition modification for such property under subsection 1, paragraph HH,  
34 subparagraph (2) and the subtraction modifications allowed pursuant to this  
35 paragraph.

36 The total amount of subtraction claimed under this paragraph for all tax years may  
37 not exceed the addition modification under subsection 1, paragraph HH,  
38 subparagraph (2) for the same property; ~~and~~

39 **Sec. 7. 36 MRSA §5122, sub-§2, ¶NN** is enacted to read:

40 NN. For taxable years beginning on or after January 1, 2015, an amount equal to the  
41 net increase in the depreciation deduction allowable under the Code, Sections 167

1           and 168 that would have been applicable to that property had the depreciation  
2           deduction under the Code, Section 168(k) not been claimed with respect to such  
3           property placed in service during the taxable year beginning in 2014 for which an  
4           addition was required under subsection 1, paragraph II, subparagraph (2) for the  
5           taxable year beginning in 2014.

6           Upon the taxable disposition of property to which this paragraph applies, the amount  
7           of any gain or loss includable in federal adjusted gross income must be adjusted for  
8           Maine income tax purposes by an amount equal to the difference between the  
9           addition modification for such property under subsection 1, paragraph II,  
10           subparagraph (2) and the subtraction modifications allowed pursuant to this  
11           paragraph.

12           The total amount of subtraction claimed under this paragraph for all tax years may  
13           not exceed the addition modification under subsection 1, paragraph II, subparagraph  
14           (2) for the same property.

15           **Sec. 8. 36 MRSA §5200-A, sub-§1, ¶Z**, as amended by PL 2013, c. 368, Pt. TT,  
16           §13, is further amended to read:

17           Z. The amount claimed as a deduction in determining federal taxable income that is  
18           used to calculate the credit for Maine fishery infrastructure investment under section  
19           5216-D; ~~and~~

20           **Sec. 9. 36 MRSA §5200-A, sub-§1, ¶AA**, as corrected by RR 2013, c. 1, §53, is  
21           amended to read:

22           AA. For taxable years beginning in 2013:

23           (1) An amount equal to the net increase in depreciation attributable to the  
24           depreciation deduction claimed by the taxpayer under the Code, Section 168(k)  
25           with respect to property placed in service in the State during the taxable year for  
26           which a credit is claimed under section 5219-JJ for that taxable year; and

27           (2) An amount equal to the net increase in depreciation attributable to the  
28           depreciation deduction claimed by the taxpayer under the Code, Section 168(k)  
29           with respect to property for which a credit is not claimed under section 5219-JJ;  
30           and

31           **Sec. 10. 36 MRSA §5200-A, sub-§1, ¶BB** is enacted to read:

32           BB. For taxable years beginning in 2014:

33           (1) An amount equal to the net increase in depreciation attributable to the  
34           depreciation deduction claimed by the taxpayer under the Code, Section 168(k)  
35           with respect to property placed in service in the State during the taxable year for  
36           which a credit is claimed under section 5219-MM for that taxable year; and

37           (2) An amount equal to the net increase in depreciation attributable to the  
38           depreciation deduction claimed by the taxpayer under the Code, Section 168(k)  
39           with respect to property for which a credit is not claimed under section  
40           5219-MM.

1           **Sec. 11. 36 MRSA §5200-A, sub-§2, ¶X**, as amended by PL 2013, c. 368, Pt.  
2 TT, §16, is further amended to read:

3           X. To the extent included in federal taxable income, an amount equal to the  
4 refundable portion of the income tax credit under the Maine New Markets Capital  
5 Investment Program under Title 10, section 1100-Z; ~~and~~

6           **Sec. 12. 36 MRSA §5200-A, sub-§2, ¶Y**, as enacted by PL 2013, c. 368, Pt. TT,  
7 §17, is amended to read:

8           Y. For taxable years beginning on or after January 1, 2014, an amount equal to the  
9 net increase in the depreciation deduction allowable under the Code, Sections 167  
10 and 168 that would have been applicable to that property had the depreciation  
11 deduction under the Code, Section 168(k) not been claimed with respect to such  
12 property placed in service during the taxable year beginning in 2013 for which an  
13 addition was required under subsection 1, paragraph AA, subparagraph (2) for the  
14 taxable year beginning in 2013.

15           Upon the taxable disposition of property to which this paragraph applies, the amount  
16 of any gain or loss includable in federal taxable income must be adjusted for Maine  
17 income tax purposes by an amount equal to the difference between the addition  
18 modification for such property under subsection 1, paragraph AA, subparagraph (2)  
19 and the subtraction modifications allowed pursuant to this paragraph.

20           The total amount of subtraction claimed under this paragraph for all tax years may  
21 not exceed the addition modification under subsection 1, paragraph AA,  
22 subparagraph (2) for the same property; ~~and~~

23           **Sec. 13. 36 MRSA §5200-A, sub-§2, ¶Z** is enacted to read:

24           Z. For taxable years beginning on or after January 1, 2015, an amount equal to the  
25 net increase in the depreciation deduction allowable under the Code, Sections 167  
26 and 168 that would have been applicable to that property had the depreciation  
27 deduction under the Code, Section 168(k) not been claimed with respect to such  
28 property placed in service during the taxable year beginning in 2014 for which an  
29 addition was required under subsection 1, paragraph BB, subparagraph (2) for the  
30 taxable year beginning in 2014.

31           Upon the taxable disposition of property to which this paragraph applies, the amount  
32 of any gain or loss includable in federal taxable income must be adjusted for Maine  
33 income tax purposes by an amount equal to the difference between the addition  
34 modification for such property under subsection 1, paragraph BB, subparagraph (2)  
35 and the subtraction modifications allowed pursuant to this paragraph.

36           The total amount of subtraction claimed under this paragraph for all tax years may  
37 not exceed the addition modification under subsection 1, paragraph BB, subparagraph  
38 (2) for the same property.

39           **Sec. 14. 36 MRSA §5219-MM** is enacted to read:

1           **§5219-MM. Maine capital investment credit for 2014**

2           **1. Credit allowed.** A taxpayer that claims a depreciation deduction under the Code,  
3 Section 168(k) for property placed in service in the State during the taxable year  
4 beginning in 2014 is allowed a credit against the taxes imposed by this Part in an amount  
5 equal to 9% of the amount of the net increase in the depreciation deduction reported as an  
6 addition to income for the taxable year under section 5122, subsection 1, paragraph II,  
7 subparagraph (1) or section 5200-A, subsection 1, paragraph BB, subparagraph (1) with  
8 respect to that property, except for excluded property under subsection 2.

9           **2. Certain property excluded.** The following property is not eligible for the credit  
10 under this section:

11           A. Property owned by a public utility as defined in Title 35-A, section 102,  
12 subsection 13;

13           B. Property owned by a person that provides radio paging services as defined in Title  
14 35-A, section 102, subsection 15;

15           C. Property owned by a person that provides mobile telecommunications services as  
16 defined in Title 35-A, section 102, subsection 9-A;

17           D. Property owned by a cable television company as defined in Title 30-A, section  
18 2001, subsection 2;

19           E. Property owned by a person that provides satellite-based direct television  
20 broadcast services;

21           F. Property owned by a person that provides multichannel, multipoint television  
22 distribution services; and

23           G. Property that is not in service in the State for the entire 12-month period  
24 following the date it is placed in service in the State.

25           **3. Limitations; carry-forward.** The credit allowed under subsection 1 may not  
26 reduce the tax otherwise due under this Part to less than zero. Any unused portion of the  
27 credit may be carried forward to the following year or years for a period not to exceed 20  
28 years.

29           **4. Recapture.** The credit allowed under this section must be fully recaptured to the  
30 extent claimed by the taxpayer if the property forming the basis of the credit is not used  
31 in the State for the entire 12-month period following the date it is placed in service in the  
32 State. The credit must be recaptured by filing an amended return in accordance with  
33 section 5227-A for the tax year in which that property was used to calculate the credit  
34 under this section. The amended return must reflect the credit disallowed and the income  
35 modifications required by section 5122, subsection 1, paragraph II and section 5200-A,  
36 subsection 1, paragraph BB with respect to that property.

37           **Sec. 15. Application.** That section of this Act that amends the Maine Revised  
38 Statutes, Title 36, section 111, subsection 1-A applies to tax years beginning on or after  
39 January 1, 2014 and to any prior tax years as specifically provided by the United States  
40 Internal Revenue Code of 1986 and amendments to that Code as of December 31, 2014.

1       **Emergency clause.** In view of the emergency cited in the preamble, this  
2 legislation takes effect when approved.

3                                       **SUMMARY**

4       This bill updates references to the United States Internal Revenue Code of 1986  
5 contained in the Maine Revised Statutes, Title 36 to refer to the United States Internal  
6 Revenue Code of 1986, as amended through December 31, 2014, for tax years beginning  
7 on or after January 1, 2014 and for any prior tax years as specifically provided by the  
8 United States Internal Revenue Code of 1986, as amended. This bill primarily affects the  
9 State's income tax laws.

10       This bill also decouples Maine individual and corporate income taxes from federal  
11 bonus depreciation deductions. In addition, it provides a Maine capital investment credit  
12 for taxable years beginning in 2014 with respect to depreciable property placed in service  
13 in the State. The credit is equal to 9% of the amount of the net increase in depreciation  
14 attributable to the depreciation deduction claimed by the taxpayer under the United States  
15 Internal Revenue Code of 1986, Section 168(k) with respect to property placed in service  
16 in the State during the taxable year.