

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 141

H.P. 97

House of Representatives, January 21, 2021

An Act To Make Technical Changes to the Tax Laws

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

Received by the Clerk of the House on January 19, 2021. Referred to the Committee on Taxation pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

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

ROBERT B. HUNT
Clerk

Presented by Representative TERRY of Gorham.

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

2 **PART A**

3 **Sec. A-1. 36 MRSA §191, sub-§2, ¶MMM** is enacted to read:

4 MMM. The disclosure of information to the Finance Authority of Maine necessary for
5 the administration of the seed capital investment tax credit in section 5216-B.

6 **Sec. A-2. 36 MRSA §2536, first ¶**, as enacted by PL 2017, c. 474, Pt. H, §1, is
7 amended to read:

8 For tax years beginning on or after January 1, 2018, a person is allowed a credit against
9 the tax otherwise due under this chapter in an amount equal to the federal employer credit
10 for paid family and medical leave allowed to that person under the Code, Section 45S as a
11 result of wages paid to employees based in the State during the taxable year. For purposes
12 of this section, "employees based in the State" means employees that perform more than
13 50% of employee-related activities for the employer at a location in the State.

14 **Sec. A-3. 36 MRSA §5164, sub-§2**, as enacted by P&SL 1969, c. 154, Pt. F, §1,
15 is amended to read:

16 **2. Shares of fiduciary adjustment.** The respective shares of an estate or trust and its
17 beneficiaries, including, solely for the purpose of this allocation, nonresident beneficiaries,
18 in the fiduciary adjustment ~~shall~~ must be in proportion to their respective shares of federal
19 distributable net income of the estate or trust. If the estate or trust has no federal
20 distributable net income for the taxable year, the share of each beneficiary in the fiduciary
21 adjustment ~~shall~~ must be in proportion to ~~his~~ the beneficiary's share of the estate or trust
22 income for ~~such that~~ that year, under local law or the terms of the instrument, ~~which that~~
23 is required to be distributed currently and any other amounts of such income distributed in
24 ~~such that~~ that year. Any balance of the fiduciary adjustment ~~shall~~ must be allocated to ~~to~~
25 the estate or trust.

26 **Sec. A-4. 36 MRSA §5204**, as amended by PL 2011, c. 548, §29, is repealed.

27 **Sec. A-5. 36 MRSA §5204-A**, as amended by PL 2011, c. 380, Pt. N, §16 and
28 affected by §19, is repealed.

29 **Sec. A-6. 36 MRSA §5219-UU, first ¶**, as enacted by PL 2017, c. 474, Pt. H, §2,
30 is amended to read:

31 For tax years beginning on or after January 1, 2018, a person is allowed a credit against
32 the tax otherwise due under this Part in an amount equal to the federal employer credit for
33 paid family and medical leave allowed to that person under the Code, Section 45S as a
34 result of wages paid to employees based in the State during the taxable year. For purposes
35 of this section, "employees based in the State" means employees that perform more than
36 50% of employee-related activities for the employer at a location in the State.

37 **Sec. A-7. 36 MRSA §5220, sub-§4, ¶B**, as amended by PL 2005, c. 618, §15 and
38 affected by §22, is further amended to read:

39 B. Gross Both distributable net income derived from or connected with sources in this
40 State as determined in accordance with section 5142 as if the estate or trust were a

1 nonresident individual and gross income of \$10,000 or more, regardless of the amount
2 of Maine taxable income; or

3 **Sec. A-8. 36 MRSA §5221**, as amended by PL 1985, c. 783, §§39 and 40, is further
4 amended to read:

5 **§5221. Joint returns by ~~husband and wife~~ spouses**

6 **1. General.** ~~A husband and wife~~ Spouses may make a joint return with respect to the
7 tax imposed by this Part even though one of the spouses has neither gross income nor
8 deductions except that:

9 A. ~~No~~ A joint return ~~shall~~ may not be made under this ~~part~~ Part if the spouses are not
10 permitted to file a joint federal income tax return;

11 B. If the federal income tax liability of either spouse is determined on a separate federal
12 return, their income tax liabilities under this Part ~~shall~~ must be determined on separate
13 returns;

14 C. Except as provided in subsection 2, if the federal income tax liabilities of ~~husband~~
15 ~~and wife~~ the spouses are determined on a joint federal return, they shall file a joint
16 return under this Part and their tax liabilities ~~shall be~~ are joint and several; ~~and~~

17 D. If neither spouse is required to file a federal income tax return and either or both
18 are required to file an income tax return under this Part, they may elect to file separate
19 or joint returns and pursuant to such election their liabilities ~~shall be~~ are separate or
20 joint and several.

21 **2. Nonresidents.** If both ~~husband and wife~~ spouses are nonresidents and one has no
22 Maine-source income, the spouse having Maine-source income shall file a separate Maine
23 nonresident income tax return, as a single individual, in which event ~~his~~ the spouse's tax
24 liability ~~shall be~~ is separate; but they may elect to determine their joint taxable income as
25 nonresidents, in which case their liabilities ~~shall be~~ are joint and several.

26 If ~~either husband or wife~~ one spouse is a resident and the other is a nonresident, they shall
27 file separate Maine income tax returns as single individuals, in which event their tax
28 liabilities ~~shall be~~ are separate; but they may elect to determine their joint taxable income
29 as if both were residents and, in that case, their liabilities ~~shall be~~ are joint and several.

30 **Sec. A-9. 36 MRSA §5228, sub-§6**, as repealed and replaced by PL 1985, c. 691,
31 §§35 and 48, is amended to read:

32 **6. Joint estimated tax payment.** If they are eligible to do so for federal tax purposes,
33 ~~a husband and wife~~ spouses may jointly estimate tax as if they were one taxpayer, in which
34 case the liability with respect to the estimated tax ~~shall be~~ is joint and several. If joint
35 estimate payment is made, but ~~husband and wife~~ the spouses elect to determine their taxes
36 under this chapter separately, the estimated tax for the year may be treated as the estimated
37 tax of either ~~husband or wife~~ spouse, or may be divided between them, as they may elect.

38 **Sec. A-10. Application; retroactivity.** Those sections of this Part that amend the
39 Maine Revised Statutes, Title 36, sections 2536, first paragraph and 5219-UU, first
40 paragraph apply retroactively to tax years beginning on or after January 1, 2018.

41 **PART B**

1 **5. Confidentiality.** Copies of the qualifying examination and individual examination
2 results are confidential and are not a public record as defined in Title 1, section 402,
3 subsection 3.

4 **Sec. C-2. 36 MRSA §694, sub-§2, ¶C,** as amended by PL 2007, c. 627, §26, is
5 further amended to read:

6 C. In the case of a municipality that has one or more tax increment financing districts
7 authorized pursuant to Title 30-A, chapter 206, subchapter 1 and effective under Title
8 30-A, section 5226, subsection 3 prior to April 1, 2008 or authorized pursuant to Title
9 30-A, former chapter 207 and effective under Title 30-A, former section 5253,
10 subsection 1, paragraph F, prior to April 1, 2008, the applicable percentage with respect
11 to TIF exempt business equipment is 50% plus a percentage amount equal to the
12 percentage amount, if any, by which the municipal tax increment percentage for the
13 tax increment financing district in which the TIF exempt business equipment is located
14 exceeds 50%. This paragraph applies only when it will result in a greater percentage
15 of reimbursement for the TIF exempt business equipment than would be provided
16 under the greater of paragraph A or B and the reimbursement has been used to fund a
17 development program pursuant to Title 30-A, section 5224.

18 **PART D**

19 **Sec. D-1. 36 MRSA §173, sub-§1,** as enacted by PL 1985, c. 691, §4, is amended
20 to read:

21 **1. Request and issuance of warrant.** If the taxpayer does not make payment as
22 demanded pursuant to section 171, the State Tax Assessor may file in the office of the clerk
23 of the Superior Court of any county a certificate addressed to the clerk of that court
24 specifying the amount of tax, interest and penalty ~~which that~~ was demanded, the name and
25 address of the taxpayer as it appears on the records of the State Tax Assessor, the facts
26 whereby the amount has become due, and the notice given and requesting that a warrant be
27 issued against the taxpayer in the amount of the tax, penalty and interest set forth in the
28 certificate and with costs. If the State Tax Assessor reasonably believes that the taxpayer
29 may abscond within the 10-day period provided by section 171, ~~he~~ the assessor may,
30 without giving notice to or making demand upon the taxpayer, request immediate issuance
31 of a warrant. Immediately upon the filing of the certificate, the clerk of the Superior Court
32 shall issue a warrant in favor of the State against the taxpayer in the amount of tax, interest
33 and penalty set forth in the certificate and with costs.

34 **Sec. D-2. 36 MRSA §173, sub-§2,** as enacted by PL 1985, c. 691, §4, is amended
35 to read:

36 **2. Effect of warrant.** The warrant ~~shall have~~ has the force and effect of an execution
37 issued upon a judgment in a civil action for taxes and may be served in the county where
38 the taxpayer may be found by the sheriff of that county or ~~his~~ the sheriff's deputies or by
39 any agent of the State Tax Assessor authorized under section 112, subsection 6 to collect
40 any tax imposed by this Title. In the execution of the warrant and collection of taxes
41 pursuant to this Title, including supplementary disclosure proceedings for that purpose
42 under Title 14, chapter 502, an agent of the State Tax Assessor ~~shall have~~ has the powers
43 of a sheriff and ~~shall be~~ is entitled to collect from the debtor the same fees and charges

1 permitted to a sheriff. Any such fees and charges collected by that agent ~~shall~~ must be
2 remitted promptly to the State.

3 **Sec. D-3. 36 MRSA §199-E**, as enacted by IB 2015, c. 1, §28, is repealed.

4 **SUMMARY**

5 This bill makes technical changes to the tax laws.

6 For changes to the income tax law, Part A:

7 1. Authorizes the Department of Administrative and Financial Services, Maine
8 Revenue Services to disclose information to the Finance Authority of Maine necessary for
9 the administration of the seed capital investment tax credit in the Maine Revised Statutes,
10 Title 36, section 5216-B. The authority is responsible for certifying investments that are
11 eligible for the credit;

12 2. Amends Title 36, section 5164, subsection 2, a provision of the Maine fiduciary
13 income tax law, to incorporate gender-neutral terms, delete a duplicate word and make
14 other technical textual changes;

15 3. Repeals the additional tax on lump-sum retirement plan distributions, which does
16 not apply to tax years beginning after 2012;

17 4. Repeals the additional tax on early distributions from qualified retirement plans,
18 which does not apply to tax years beginning after 2012;

19 5. Clarifies that, for both the tax imposed on insurance companies pursuant to Title 36,
20 chapter 357 and on persons pursuant to Title 36, Part 8, for purposes of the employer credit
21 for family and medical leave, "employees based in the State" means employees that
22 perform more than 50% of employee-related activities for the employer at a location in
23 Maine. This change reflects administrative practice since implementation of the credit;

24 6. Clarifies that a nonresident estate or trust that does not have Maine taxable income
25 or a Maine income tax liability must nonetheless file a Maine income tax return if the estate
26 or trust has distributable net income derived from or connected with sources in Maine and
27 gross income of \$10,000 or more. This change reflects long-standing administrative
28 practice; and

29 7. Amends Title 36, sections 5221 and 5228 to incorporate gender-neutral terms.

30 For changes to the sales tax law, Part B:

31 1. Amends the diabetic supplies exemption to require use by the purchaser;

32 2. Includes in Title 36 the effective date of 3 sales tax exemptions enacted in the First
33 Regular Session of the 129th Legislature that did not take effect until after the adjournment
34 of the Second Regular Session of the 129th Legislature and repeals conflicting public law
35 provisions;

36 3. Clarifies the exemption for nonprofit worldwide charitable organizations; and

37 4. Removes the Mayo Regional Hospital in Dover-Foxcroft from the hospital tax
38 definition of "municipally funded hospital."

39 For changes to the property tax law, Part C:

1 1. Clarifies that the local assessor qualifying examination and individual examination
2 results are confidential and thus not producible under a Freedom of Access Act request;
3 and

4 2. Clarifies that enhanced business equipment tax exemption reimbursement only
5 applies to tax increment financing exempt business equipment when the reimbursement is
6 used to fund a tax increment financing development program.

7 For general changes to tax law, Part D:

8 1. Updates Title 36, section 173, concerning collection by warrant, to clarify the intent
9 and make technical changes; and

10 2. Repeals a provision that required the joint standing committee of the Legislature
11 having jurisdiction over taxation matters to report out a bill permanently eliminating
12 corporate tax expenditures totaling \$6,000,000 per biennium by February 6, 2016.