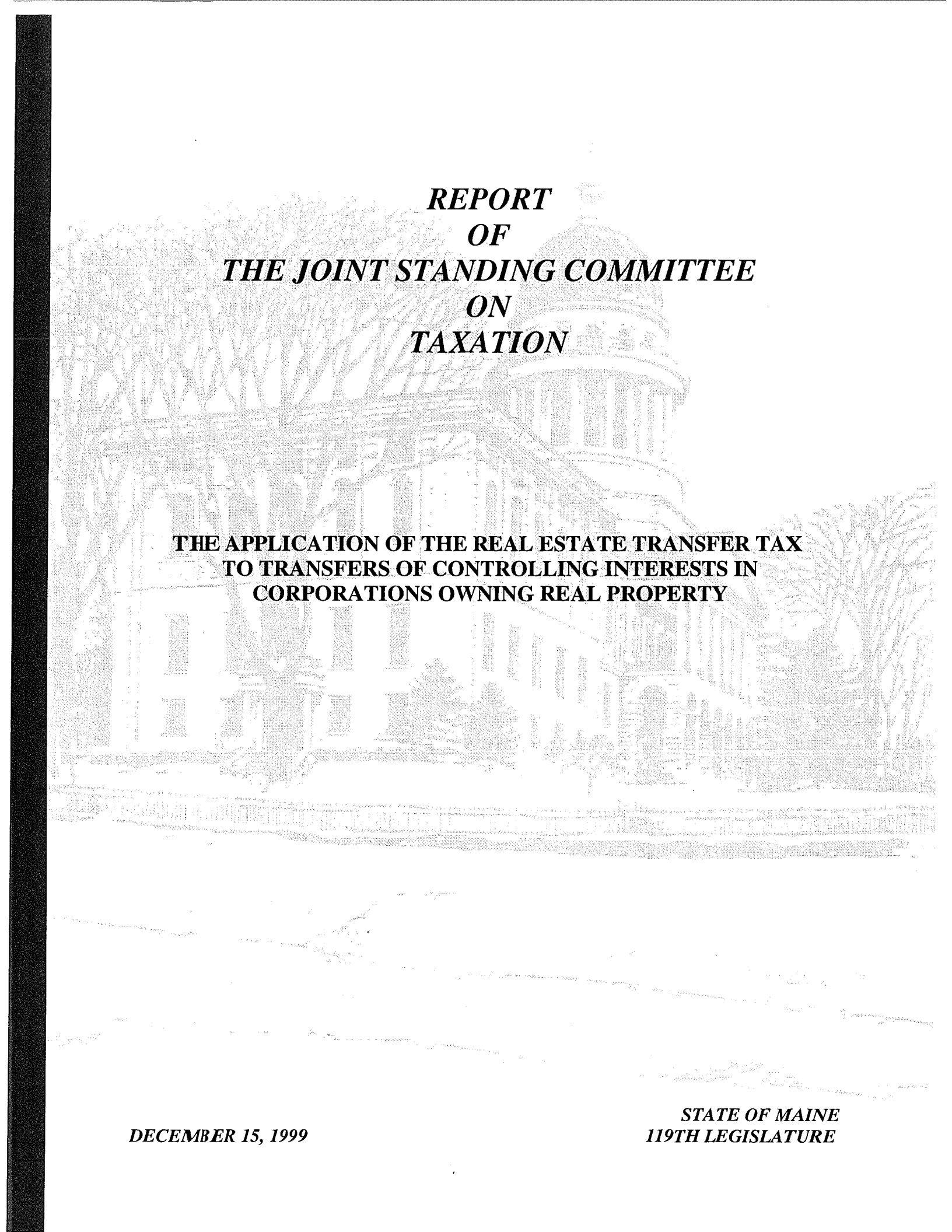


MAINE STATE LEGISLATURE

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**REPORT
OF
THE JOINT STANDING COMMITTEE
ON
TAXATION**

**THE APPLICATION OF THE REAL ESTATE TRANSFER TAX
TO TRANSFERS OF CONTROLLING INTERESTS IN
CORPORATIONS OWNING REAL PROPERTY**

DECEMBER 15, 1999

**STATE OF MAINE
119TH LEGISLATURE**

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REPORT ON

**THE APPLICATION OF THE REAL ESTATE TRANSFER TAX
TO TRANSFERS OF CONTROLLING INTERESTS IN
CORPORATIONS OWNING REAL PROPERTY**

December 15, 1999

Members:

*Senator Richard P. Ruhlin, Chair
Senator Beverly C Daggett
Senator S. Peter Mills
Representative Kenneth T. Gagnon, Chair
Representative Bonnie Green
Representative Thomas M. Davidson
Representative Patrick Colwell
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EXECUTIVE SUMMARY

In recent years, it has come to public attention, that real estate may change hands without being subject to a real estate transfer tax if it is owned by a corporation or other business entity and the transfer occurs through the transfer of a controlling interest in the business rather than by deed. **LD 1883, An Act to Ensure that Certain Land Transfers Accomplished through Stock Transfers are not Exempt from the Transfer Tax** was introduced in the First Regular Session of the 119th Legislature to address this issue and was carried over to the Second Regular Session with the understanding that the Joint Standing Committee on Taxation would study the problem and make recommendations to address the inequities identified in the real estate transfer tax.

The Committee held four meetings in Augusta to discuss the relationship between the real estate transfer tax and transfers of controlling interests in business entities. The Committee investigated the laws of several other states and focused its consideration on the laws of four other states that have addressed this issue. Special attention was given to the law of Washington State which has a tax that is reported to be effective on real property transferred through the transfer of a controlling interest in a business. The Committee considered the following options:

- Leaving the law as it is
- Expanding the real estate transfer tax to cover transfers of real estate that changes hands through the transfer of a controlling interest in a business
- Expanding the real estate transfer tax to cover transfers of controlling interests but limiting the expansion to transfers of unimproved property, transfers of certain types of entities or transfers of property with a minimum value.

The Committee recommends that the real estate transfer tax be made more equitable by extending the same tax treatment to transfers of real property that are accomplished through the transfer of a controlling interest in a business entity. The Committee's recommendation will take the form of a Committee Amendment to LD 1883 and considered during the Second Regular Session of the Legislature. The Committee believes that this tax should be at the same rate and administered in the same manner as the tax on transfers by deed. In order to ensure that the tax will be reported and paid, the Committee recommends that if the tax is not reported and paid in a timely manner, the liability for the tax, which is otherwise split equally between the grantor and the grantee, becomes "joint and several" meaning that either party would become liable for the full amount of the tax.

REPORT

I. INTRODUCTION

In recent years, it has come to public attention, through the sale of several corporations owning large parcels of undeveloped land or other highly valued real estate, that real estate may change hands without being subject to the real estate transfer tax. When land is owned by a corporation, the transfer of a controlling interest in the corporation effectively results in a transfer of the land to new owners; however, no legal transfer of ownership of the real estate occurs. No deed is given because the deed remains in the name of the corporation. Clever business planners can take advantage of exemptions in the real estate transfer tax for internal corporate transfers and reorganizations to create real estate holding entities that can be deeded real estate without incurring transfer tax liability. The sale of the holding entity may also be accomplished with no real estate transfer tax implications because no deed changes hands. Published newspaper reports in the Winter of 1998-99 identified at least three recent deals involving large parcels of forestland that escaped transfer tax in this manner. According to the press reports 2,561,000 acres of forestland exchanged hands for \$555 million. If taxed, these transfers would have generated \$2.4 million in additional transfer tax revenue.¹

LD 1883, An Act to Ensure that Certain Land Transfers Accomplished through Stock Transfers are not Exempt from the Transfer Tax was introduced to address these issues and carried over to the Second Regular Session. This study is the result of the desire of the members of the Joint Standing Committee on Taxation to explore this situation and make recommendations to address any inequities identified in the application of the real estate transfer tax.

II. BACKGROUND

A. CURRENT REAL ESTATE TRANSFER TAX

The real estate transfer tax was enacted in 1967. With limited exceptions, the tax is imposed on each **deed** transferring title to real property in the State. The tax is assessed and collected by the county registers of deeds through the deed recording system. The tax is imposed at the rate of \$2.20 for each \$500 or fractional part thereof of the value of the property transferred. A deed offered for recording must be accompanied by a declaration of value. The value of the real property is presumed to be the actual consideration paid for the property unless the transfer involves a gift or a contract or deed with nominal consideration or without stated consideration. In these cases, value is the estimated open market

¹ "Land deals offer lesson in loopholes." Portland Press Herald. Feb 3. 1999. p. 1B.

value of the property with willing and knowledgeable buyers and sellers. Value does not include the amount of consideration paid for vacation exchange rights and other services and club memberships that are included in a transfer of property.

The real estate transfer tax is imposed one-half on the grantor and one-half on the grantee. The tax is collected by the county registers of deeds, but the State Tax Assessor is responsible for rules, forms and administrative procedures. The county retains 10% of the tax to cover the costs of collection. The remaining 90% is paid to the State with one half deposited in the state General Fund and one-half deposited in the Housing Opportunities for Maine (HOME) Fund administered by the Maine State Housing Authority to assist low income families to acquire housing.²

The real estate transfer tax provides for the following exemptions:

EXEMPTIONS FROM THE REAL ESTATE TRANSFER TAX

- Certain transfers by or to government entities
- Mortgage deeds
- Deeds affecting a previous deed
- Deeds between certain family members
- Tax deeds
- Deeds of partition
- Deeds pursuant to mergers
- Deeds between parent and subsidiary corporations for no consideration other than the cancellation or surrender of stock
- Deeds prior to October 1, 1975
- Deeds of distribution
- Deeds executed by public officials in performance of official duties
- Deeds of foreclosure
- Deeds pursuant to the Bankruptcy Code
- Deeds by a trustee, nominee or straw
- Certain deeds by entities for organizational purposes and for no consideration other than shares or ownership interests in the entities involved
- Deeds to nonprofit entities or charitable trusts for conservation purposes
- Deeds to a limited liability company when the grantor owns an interest in the company in the same proportion to the grantor's interest in the real estate

² 36 MRSA §4641-B.

III. ISSUES PRESENTED BY CURRENT STUDY

A. LD 1883

LD 1883, An Act to Ensure that Certain Land Transfers Accomplished through Stock Transfers are not Exempt from the Transfer Tax sponsored by Sen. Michaud of Penobscot County, proposed to amend the current real estate transfer tax to eliminate the current tax exemptions for certain transfers between related corporations. Specifically the bill proposed to remove the exemptions in current law for transfers by deed pursuant to corporate mergers when no gain or loss is recognized under the Internal Revenue Code, deed between parent and subsidiary corporations for no consideration other than shares of stock, or deed pursuant to certain reorganizations of family corporations, partnerships, limited partnerships or limited liability companies when those transfers involve transfers of “unimproved or undeveloped land” in excess of 100 acres.

A public hearing was held on LD 1883 on April 5, 1999. Representative Stanley and Sen. Nutting testified in favor of the bill. No testimony was offered in opposition to the bill. The Bureau of Revenue Services and the Maine Pulp and Paper Association offered testimony neither for nor against. The Maine Chamber and Business Alliance provided written comments without taking a position on the bill but did not testify.

Following the public hearing on the bill and the Committee work session, it became apparent that the bill as drafted did not adequately address the intent of the sponsor to amend the law to include under the real estate transfer tax transfers of real estate that were accomplished through the transfer of controlling interests in a corporation or other entity without the exchange of a deed. The Taxation Committee determined that the issue was important but complicated and voted to request permission to carry the bill over to the Second Regular Session and request an interim study of the issues presented by the bill.

B. BROADER IMPLICATIONS

Upon initial examination, the Taxation Committee determined that the issues related to the application of the real estate transfer tax to transfers of corporate controlling interests were broader than those presented by the original bill. The majority of the Committee members was concerned about the unequal treatment of the tax as it related to all transfers, not just to transfers of large parcels of unimproved land. Therefore, the Committee’s investigation of issues

during the interim study addressed all transfers of entities that own real estate, not only those addressed by the original bill.

IV. THE PROCESS

A. MEETINGS

The Committee held four meetings during the interim to address the issues presented by this study. The meetings were held in Augusta on August 25th, October 6th, November 17th and December 1st 1999.

The Committee investigated the history and application of Maine's real estate transfer tax. In addition to the land transfer situations that gave rise to LD 1883, the Bureau of Revenue Services provided information that indicated that businesses were becoming increasingly sophisticated in their ability to engage in organizational maneuvering in order to avoid the real estate transfer tax. The Committee also received additional public comment addressed to the ineffectiveness of some of the provisions of LD 1883 as drafted.

The Committee explored the tax treatment by other selected states of transfers of controlling interests in entities with an interest in real estate. A cursory investigation of the real estate transfer taxes of other states indicates that most states have a real estate transfer tax and that most states, like Maine, apply the tax to the transfer of real estate by deed. A few states go further and apply a tax to the transfer of controlling interests in entities with an interest in real estate. The Committee undertook a more detailed examination of the laws of the following states.

1. Connecticut. Connecticut has a separate tax on the transfer of controlling interests in entities with an interest in real estate with a value exceeding \$2,000. The tax is equal to 1.11% of the "present true and actual value" of the real estate. The statute parallels the state's real estate transfer tax but operates separately from that tax. According to representatives of the Connecticut Department of Revenue Services, the tax does not apply to publicly traded companies, and annual filings are fewer than 100 per year. The Department reports that enforcement is time-consuming, and they do not have enough staff to give much attention to it.

2. New Hampshire. New Hampshire amended its real estate transfer tax law in 1997 to extend its application to transfers of "transferable interests in real estate holding companies."³ Because this tax is so new in New

³ "Real estate holding company" is defined as a company engaged in the business of holding, selling or leasing real estate that derives more than 50 % of its annual gross receipts from the ownership or disposition of real estate or where real estate is more than 50% of the value of the business exclusive of goodwill.

Hampshire, the New Hampshire Department of Revenue Administration was unable to provide much information about their experience with the statute.

3. Washington. Washington applies its excise tax on real estate sales to the transfers within a twelve month period of controlling interests in entities with an interest in real property. The tax is 1.28% of the selling price or the “true and fair value” of the real estate. Washington adopted a tax liability shifting mechanism to enhance notification and collection efforts. In Washington the tax liability falls initially on the seller; however, if the transaction is not reported to the State within 30 days the liability becomes joint. This shift is an incentive for buyers, their lawyers and closing agents to make sure that the transaction is reported and the tax paid. The Washington Department of Revenue reported that the tax on controlling interests (enacted in 1993) has cut down on corporations attempting to avoid the transfer tax on deeds by corporate maneuvering.

4. Vermont. Vermont law requires a person who acquires a controlling interest in a corporation holding real property in Vermont valued at more than \$500,000 to report the transaction to the State. No tax is imposed. The Vermont Department of Taxes reports that they have received four reports under the law in the last six years.

V. OPTIONS CONSIDERED

The Committee considered the following options for addressing the issue of transfers of real property through transfers of controlling interests in entities with an interest in real property.

A. LEAVING THE LAW AS IS

The Committee considered the option of making no change in current real estate transfer tax law but decided that current law is inequitable in its disparate treatment of real estate transfers depending on the form of the business owning the real estate. The ability of a business to avoid the tax by virtue of the form of its business organization was considered to give an unfair advantage to businesses with the size and sophistication to arrange for real estate to be conveyed as part of the transfer of a controlling interest in a business entity rather than by deed. The inequity exists even when the transfer is made by transfer of a controlling interest with no intent to avoid the tax. The increasing desirability of limited liability companies as a choice of business form will only increase the incidence of the unequal treatment and lead to erosion of the real estate transfer tax as a revenue source.

B. LIMITED APPLICATION

1. Limit to unimproved real property

LD 1883 was limited in application to transfers of unimproved or undeveloped land in excess of 100 acres. The bill was primarily intended to address transfers of timberland in the North Woods coincident with the sales of pulp and paper corporations owning those lands. The Committee considered limiting its recommendations to undeveloped land but concluded that the inequities created by the narrow application of the current law required a broader solution that addressed inequities in all land transfers.

2. Limit to certain types of entities

The committee considered limiting any changes to certain types of entities but agreed that any changes should be focused on ensuring that all transactions involving the change of control of real estate should be taxed in the same manner.

3. Placing a minimum real estate value on the extension of taxation to include transfers of controlling interests

The Committee considered establishing a minimum real estate value for application of the real estate transfer tax to the transfer of controlling interests. Connecticut exempts transfers with a value of \$2,000 or less. The Committee concluded that there was no administrative need for a minimum value and that transfer of real estate by means of transfers of controlling interests should be taxed in exactly the same manner as transfers by deed.

C. COMPREHENSIVE APPLICATION TO TRANSFERS OF CONTROLLING INTERESTS

The Committee settled on recommending that transfers of controlling interests in entities with an interest in real estate should be taxed in the same manner as transfers of real estate by deed.

VI. RECOMMENDATIONS

The Committee recommends expanding the real estate transfer tax to cover the transfer of real property by means of the transfer of a controlling interest in a corporation with an interest in real property. This recommendation constitutes a significant change in the application of the tax. It recognizes that the forms of business organization and operations have become much more complex than when the real estate transfer tax was originally enacted. The Committee believes that the basic principles of tax equity require that transfers of real estate should be taxed in the same manner regardless of whether the transfers are made directly by deed or indirectly by the transfer of a controlling interest in an entity that owns the real estate. The Committee recommends that the Committee chairs request permission from the presiding officers to report out LD 1883 with a committee report of "Ought to Pass in New Draft." The Committee believes that a "New Draft" report is advisable because the changes recommended by the Committee extend beyond the provisions, if not the intent, of the original bill. The Committee's recommendation to apply the recommended changes to all transfers of controlling interests in entities with an interest in real estate deserves the public notice that accompanies a New Draft. The Committee also believes that a public hearing on the new draft is desirable to permit opportunity for public comment.

The Committee recommends that the tax on controlling interests be incorporated into the existing real estate transfer tax and administered in the same way. The Committee's primary goal is to ensure that similar transfers of control of real estate be taxed similarly regardless of the business form chosen by the businesses that are the parties to the transaction. The Committee recommends that the Bureau of Revenue Services adapt a declaration of value form to collect the necessary information to impose the tax on transfers of controlling interests. The form may need to be adjusted to identify the value of real estate transferred separately from other consideration involved in a transfer of controlling interests. The form should be filed with the county register of deeds in the same manner as for transfers by deed. The tax should be collected by the county register and revenues distributed in the same manner as the revenue collected on transfers by deed. Under this proposal, the county would retain 10% of the revenue, and the State would receive 90% to be split equally between the General Fund and the Housing Opportunities for Maine Fund.

The Committee is mindful of the difficulties attendant to enforcing the duties of business entities to report transfers and pay the required transfer tax. Compliance for transfers by deed is high because of the need to pay the tax before a deed may be recorded in the registry. Because recording of a deed is not necessary for transfers of controlling interests, the incentive to self report is not comparable, and there is no central registry of transfers of controlling interests that the State can consult to verify compliance. The Committee recommends the incorporation into the law of a mechanism similar to one included in the Washington State transfer tax on controlling interests that provides an incentive to the parties to the transaction to make sure that the transfer is reported and the tax paid. The Committee recommends that the standard liability for the tax be the same

equal split between the grantor and the grantee contained in the current real estate transfer tax. However, if the tax was not reported and paid when due, the liability would become joint and several between the transferor and the transferee. With joint and several liability each party would become liable for the full amount of the tax rather than just 50%. This shift in liability would encourage reporting by the parties and their settlement agents in order to avoid incurring additional liability for the other party's share of the tax.

The Committee considered the question of whether the tax on the transfer of controlling interests should be based on the full value of the real estate transferred or prorated based on the percentage of the interest in the entity transferred. For example, if the transfer of the controlling interest in a corporation involved the sale of a 60% interest in an entity with an interest in real estate, should the tax be based on the full value of the real estate or 60% of the full value. The majority of the Committee recommends that the tax be based on the full value of the real estate. A minority of the Committee recommends that the tax be based on the percentage of the interest transferred.

VII. LEGISLATION

The legislation recommended by the Committee extends the real estate transfer tax to cover the transfer of controlling interests in entities with an interest in real estate. Legislation to implement this recommendation is located in Appendix D. The legislation incorporates the tax into the existing real estate transfer tax and treats transfers of real estate by the transfer of controlling interests in the same manner as a transfer by deed. Reporting and compliance would be encouraged by shifting tax liability if transfers are not reported and the tax paid promptly.

APPENDICES

- A. REQUEST FOR STUDY**

- B. MEMBERSHIP OF COMMITTEE**

- C. CHART COMPARING SELECTED STATES**

- D. RECOMMENDED LEGISLATION**

APPENDIX A

COMMITTEE STUDY REQUEST

JOINT STANDING COMMITTEE ON TAXATION

1. Topic, policy area or nature of the problem to be studied

The Taxation Committee requests permission to study the application of the real estate transfer tax to corporate transfers. Currently sizable amounts of land may be transferred without being subject to the real estate transfer tax because the transfer occurs through the sale of the corporation that owns the land. No deed is exchanged because the land remains in the ownership of the corporation even though the ownership of the corporation has changed.

2. Description of the tasks to be completed

1. The Committee will investigate the relationship between transfers of land through transfers of corporate ownership and attempt to identify the extent of the practice.

2. The Committee will explore methods of ensuring that transfers of land are taxed equitably.

3. The Committee will recommend the appropriate treatment of land transfers through the transfer of corporate ownership under the real estate transfer tax. The Committee's recommendation will take the form of Committee reports on Ld 1883, An Act to Ensure that Certain Land Transfers Accomplished through Stock Transfers are not Exempt from the Real Estate Transfer Tax, which the Committee has been given permission to carry over.

3. The proposed chair or chairs

The Committee Chairs will chair the study committee

4. Number and identification of the members who will serve on the study

Permission is requested to include all committee members in the study.

5. Proposed study budget and work plan

Standard per diems and expenses for legislators and ancillary expenses for 4 meetings amount to \$5,460.

6. Number of and anticipated location of any public meetings to be held

The Committee requests permission for 4 meetings in Augusta

7. Anticipated convening and completion dates of the study

The study will begin by September 1999 and will be completed by December 15, 1999.

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APPENDIX B

119TH LEGISLATURE

JOINT STANDING COMMITTEE ON TAXATION

Senators:

Richard P. Ruhlin, Chair	Penobscot
Beverly C. Daggett	Kennebec
S. Peter Mills	Somerset

Representatives:

Kenneth T. Gagnon	Waterville
Bonnie Green	Monmouth
Thomas M. Davidson	Brunswick
Patrick Colwell	Gardiner
Stephen S. Stanley	Medway
David G. Lemoine	Old Orchard Beach
Kenneth F. Lemont	Kittery
Eleanor M. Murphy	Berwick
John T. Buck	Yarmouth
Peter E. Cianchette	South Portland

APPENDIX C

SELECTED STATES TAX ON REAL ESTATE TRANSFERS

jsj 10/4/99

STATE	TAXABLE EVENT	RATE	RELATED ENTITY TRANSFERS (direct transfer of ownership of property in connection with entity reorganization or change in entity status)	UNRELATED ENTITY TRANSFERS (sales or transfer of controlling entity; no direct transfer of ownership of property)
ME	Deed by which real property is transferred	\$2.20 per \$500 of value	Exclusions	no RETT tax
NH	Sale, granting and transfer of real estate any interest therein including transfers by operation of law	\$0.75 per \$100 of price or consideration	Exclusions	RETT applies to transfer of transferable interests in real estate holding companies to the extent that of the fair market value of NH real estate held by the company
VT	Transfers by deed	\$1.25% of value	Exclusions	Duty to report transfers of controlling interest in corporation if fair market value of real estate held by the corporation exceeds \$500,000
SC	Recording a deed	\$1.85 per \$500 of value	Exclusions	no tax
GA	Transfers by deed, instrument or writing	\$1.00 per \$1,000 of value	Exclusions	no tax
OR	Deeds, instrument or other writing by which realty is transferred	\$0.10 per \$100 of value		
MN	Deeds, instruments or writing by which realty is transferred	\$1.65 per \$500	Few exclusions	no tax

WA	Sale of real property Includes sale of standing timber	1.28% of selling price	Exclusions	Includes the transfer of a controlling interest in an entity with an interest in real property
WI	Conveyance of real estate due when submitted for recording	\$0.30 per \$100	Exclusions	no tax
CT	RETT on deed, instrument, writing conveying interest in real estate	0.61% of value	Exclusions	no tax
	Tax on transfer of controlling interest in entity that possesses real property	1.11% of value of the interest in real property	no	Taxes transfer of controlling interest in entity that possesses real property

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APPENDIX D

**RECOMMENDED LEGISLATION
NEW DRAFT OF LD 1883**

Sec. 1. 36 MRSA § 4641, sub-§§ 1-A and 2-A are enacted to read:

1.-A. Controlling interest. “Controlling interest” means:

A. In the case of a corporation, either 50% or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or 50% of the capital, profits, or beneficial interest in the voting stock of the corporation; and

B. In the case of a partnership, association, trust or other entity, 50% or more of the capital, profits, or beneficial interest in the partnership, association, trust or other entity.

2-A. Real property. “Real property” means land or anything affixed to land. “Real property” includes but is not limited to improvements such as buildings, mobile homes other than stock-in-trade, lines of electric light and power companies, pipelines and other things constructed or situated on land when the owner of the improvements is not the landowner.

Sec. 2. 36 MRSA §4641-A, sub-§3 is amended to read:

3. Value. “Value” means the amount of the actual consideration ~~therefor~~ for the real property, except that in the case of a gift, or a contract or deed with nominal consideration or without stated consideration, or in the case of the transfer of a controlling interest in an entity with a fee interest in real property where the consideration for the real property cannot be determined, “value” is to be based on the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

“Value” does not include the amount of consideration attributable to vacation exchange rights, vacation services or club memberships or the costs associated with those rights, services or memberships. Upon request of a municipal assessor or the State Tax Assessor, a developer of a time-share estate, as defined in Title 33, section 591, subsection 7, or an association of time-share estate owners shall provide an itemized schedule of fees included in the sales price of a time-share estate.

Sec. 3. 36 MRSA §§4641-A are amended to read:

36 § 4641-A. Rate of tax; liability for tax

~~There is imposed on each deed by which any real property in this State is transferred a tax at the rate of \$2.20 for each \$500 or fractional part thereof of the value~~

of the property transferred, the tax to be imposed 1/2 on the grantor and 1/2 on the grantee.

1. Deeds. A tax is imposed on each deed by which any real property in this State is transferred.

A. The rate of the tax is \$2.20 for each \$500 or fractional part thereof of the value of the property transferred.

B. The tax is imposed 1/2 on the grantor and 1/2 on the grantee.

2. Transfer of controlling interest in entity with interest in real property. A tax is imposed on the transfer or acquisition within any 12-month period of a controlling interest in any entity with a fee interest in real property in this State.

A. The rate of the tax is \$2.20 for each \$500 or fractional part thereof of the value of the real property owned by the entity and located in this state.

B. The tax is imposed ~~on the~~ 1/2 on the transferor and 1/2 on the transferee, but if the transfer or acquisition is not reported to the register of deeds in the county or counties in which the property is located, and the tax is not paid, within 30 days of the completion of the transfer or acquisition, the transferor and the transferee are jointly and severally liable for the full amount.

C. If a controlling interest is acquired by a series of transfers, each transferor is liable for its proportional share of tax based on the value of the property on the date of sale.

Sec. 4. 36 MRSA §4641-B is repealed and the following enacted in its place:

36 § 4641-B. Collection

1. Transfer of real property by deed. The State Tax Assessor shall provide for the collection of the tax on the transfer of real property by deed by each register of deeds, and for that purpose may provide for the installation of a meter machine in each registry office. When any deed is offered for recordation, the register of deeds shall ascertain and compute the amount of tax due thereon and shall collect that amount. The amount of tax must be computed on the value of the property as set forth in the declaration of value prescribed by section 4641-D. Payment of tax must be evidenced by affixing such indicia of payment as prescribed by the State Tax Assessor to the declaration of value provided for in section 4641-D.

2. Transfer or acquisition of a controlling interest in an entity with a fee interest in real property. A person transferring or acquiring a controlling interest in an entity with a fee interest in real property for which no deed is given shall report the

transfer or acquisition to the register of deeds in the county or counties in which the real property is located within 30 days of the transfer or acquisition on a return in the form of an affidavit furnished by the State Tax Assessor. The return must be signed by both the transferor and the transferee and must be accompanied by payment of the tax due. When the real property is located in more than one county, the tax must be divided proportionally among the counties in the same proportion in which the real property value is distributed among the counties. Disputes between two or more counties as to the proper amount of tax due to them as a result of a particular transaction must be decided by the State Tax Assessor upon the written petition of an official authorized to act on behalf of any such county.

3. Disposition of Funds. Each register of deeds shall, on or before the 10th day of each month, pay over to the State Tax Assessor 90% of the tax collected pursuant to this section during the previous month. The remaining 10% must be retained for the county by the register of deeds and accounted for to the county treasurer as reimbursement for services rendered by the county in collecting the tax. If the tax collected is not paid over by the 10th day of the month, the State Tax Assessor may impose interest pursuant to section 186.

4. Distribution of State's share of proceeds. The State Tax Assessor shall pay all net receipts to the Treasurer of State, who shall credit 1/2 of the revenue to the General Fund and who shall monthly pay the remaining 1/2 to the Maine State Housing Authority, which shall deposit the funds in the Housing Opportunities for Maine Fund created in Title 30-A, section 4853.

5. Dispute regarding amount. In the event of a dispute as to the correct amount of tax, the individual who is seeking to record the deed or a party to the transfer of a controlling interest may request the State Tax Assessor to determine the correct amount of tax to be paid

Sec. 5. 36 MRSA §§4641-C to 4641-E are amended as follows:

36 § 4641-C. Exemptions

The following deeds are exempt from the tax imposed by this chapter:

1. Governmental entities. Deeds to property transferred to or by the United States, the State of Maine or any of their instrumentalities, agencies or subdivisions. For the purposes of this subsection, only the United States, the State of Maine and their instrumentalities, agencies and subdivisions are exempt from the tax imposed by section 4641-A; except that real property transferred to the Department of Transportation or the Maine Turnpike Authority for transportation purposes; gifts of real property to governmental entities; and deeds transferring real property to governmental entities from a bona fide nonprofit land conservation organization are exempt from the tax;

2. Mortgage deeds. Mortgage deeds, discharges of mortgage deeds and partial releases of mortgage deeds, deeds from a mortgagor to a mortgagee in lieu of foreclosure and deeds from a mortgagee to itself at a public sale held pursuant to Title 14, section 6323. In the event of a deed to a 3rd party at such a public sale, the tax imposed upon the grantor by section 4641-A applies only to that portion of the proceeds of sale that exceeds the sums required to satisfy in full the claims of the mortgagee and all junior claimants originally made parties in interest in the proceedings or having subsequently intervened in the proceedings as established by the judgment of foreclosure and sale. The tax must be deducted from the excess proceeds;

3. Deeds affecting a previous deed. Deeds that, without additional consideration and without changing ownership or ownership interest, confirm, correct, modify or supplement a deed previously recorded;

4. Deeds between certain family members. Deeds between husband and wife, or parent and child, without actual consideration for the deed, and deeds between spouses in divorce proceedings;

5. Tax deeds. Tax deeds;

6. Deeds of partition. Deeds of partition when the interest conveyed is without consideration. However, if any of the parties take shares greater in value than their undivided interest, a tax is due on the difference between their proportional undivided interest and the greater value, computed at the rate set forth in section 4641-A;

7. Deeds pursuant to mergers. Deeds made pursuant to mergers of corporations from which no gain or loss is recognized under the Internal Revenue Code;

8. Deeds by subsidiary corporation. Deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock;

9. Deeds prior to October 1, 1975. Deeds dated or acknowledged prior to October 1, 1975, and offered for recording subsequent to that date;

10. Deeds by parent corporation. Deeds made by a parent corporation to its subsidiary corporation for no consideration other than shares of stock of the subsidiary corporation;

11. Deeds of distribution. Deeds of distribution made pursuant to Title 18-A;

12. Deeds executed by public officials. Deeds executed by public officials in the performance of their official duties;

13. Deeds of foreclosure and in lieu of foreclosure. A deed conveying real property back to a lender holding a bona fide mortgage that is genuinely in default, either by a sheriff conducting a foreclosure sale or by the mortgagor in lieu of foreclosure;

14. Deeds given pursuant to the United States Bankruptcy Code. Deeds given pursuant to the United States Bankruptcy Code;

15. Deeds to a trustee, nominee or straw. Any deeds:

- A. To a trustee, nominee or straw party for the grantor as beneficial owner;
- B. For the beneficial ownership of a person other than the grantor when, if that person were the grantee, no tax would be imposed upon the conveyance pursuant to this chapter; or
- C. From a trustee, nominee or straw party to the beneficial owner;

16. Certain corporate, partnership and limited liability company deeds. Deeds between a family corporation, partnership, limited partnership or limited liability company and its stockholders, partners or members for the purpose of transferring real property in the organization, dissolution or liquidation of the corporation, partnership, limited partnership or limited liability company under the laws of this State, if the deeds are given for no actual consideration other than shares, interests or debt securities of the corporation, partnership, limited partnership or limited liability company. For purposes of this subsection a family corporation, partnership, limited partnership or limited liability company is a corporation, partnership, limited partnership or limited liability company in which the majority of the voting stock of the corporation, or of the interests in the partnership, limited partnership or limited liability company is held by and the majority of the stockholders, partners or members are persons related to each other, including by adoption, as descendants or as spouses of descendants of a common ancestor who was also a transferor of the real property involved, or persons acting in a fiduciary capacity for persons so related;

17. Deeds to charitable conservation organizations. Deeds for gifts of land or interests in land granted to bona fide nonprofit institutions, organizations or charitable trusts under state law or charter, a similar law or charter of any other state or the Federal Government that meet the conservation purposes requirements of Title 33, section 476, subsection 2, paragraph B without actual consideration for the deeds; ~~and~~

18. Limited liability company deeds. Deeds to a limited liability company from a corporation, a general or limited partnership or another limited liability company, when the grantor or grantee owns an interest in the limited liability company in the same proportion as the grantor's or grantee's interest in or ownership of the real estate being conveyed; and

19. Change in identity or form of ownership. Any transfer of real property, whether accomplished by deed or otherwise, if it consists of a mere change in identity or form of ownership of an entity. This exemption is limited to those transfers where no change in beneficial ownership is made, and may include transfers involving corporations, partnerships, limited liability companies, trusts, estates, associations, and other entities.

20. Controlling interests. Transfers of controlling interests in an entity with a fee interest in real property if the transfer of the real property would qualify for exemption if accomplished by deed of the real property between the parties to the transfer of the controlling interest.

36 § 4641-D. Declaration of value

~~Any deed, except~~ Except as otherwise provided in this section, must, any deed, when offered for recording, and any report of a transfer of a controlling interest, must be accompanied by a statement or declaration prepared in duplicate and signed, subject to the penalties of perjury, by the parties to the transaction or their authorized representatives, declaring the value of the property transferred and indicating the taxpayer identification numbers of the grantor and grantee. The statement or declaration with regard to a transfer by deed must include evidence of compliance with section 5250-A and reference to the appropriate tax map and parcel number unless no tax map exists that includes that property, in which event the declaration must indicate that no appropriate tax map exists. The exceptions to the foregoing are the following:

- 1. Governmental conveyances.** Any conveyance by or to the United States of America, the State of Maine or any of their instrumentalities, agencies or subdivisions. For purposes of this subsection, only governmental entities are exempt from the requirement to file a declaration;
- 2. Mortgage.** Any mortgage or mortgage discharge;
- 3. Partial release of mortgage.** Any partial release of a mortgage deed;
- 4. Deed affecting previous deed.** Any deed which, without additional consideration, confirms, corrects, modifies or supplements a previously recorded deed;
- 5. Deed dated prior to October 1, 1975.** Any deed dated or acknowledged prior to October 1, 1975, and offered for recording after that date; and
- 6. Deed of distribution.** Any deed of distribution made pursuant to Title 18-A.

If the transfer is declared not subject to the tax, the reason therefor shall be stated.

The declaration shall be in form prescribed by the State Tax Assessor, who shall provide an adequate supply of such forms to each register of deeds in the State. The State Tax Assessor shall prescribe a form for the declaration of value with regard to transfers of controlling interests subject to tax under this chapter.

The register of deeds shall transmit both copies of the declaration of value to the State Tax Assessor not later than 40 days from the date of recordation of the deed subject to the tax.

The State Tax Assessor shall, on or before the 20th day of each month following the month of receipt, transmit one copy of each declaration of value to the assessors of the municipality or the chief assessor of a primary assessing area in which the real estate is situated.

36 § 4641-E. Powers and duties of State Tax Assessor

The State Tax Assessor is authorized to prescribe such rules and regulations as are necessary to carry out the purposes of this chapter.

Within 3 years of the recording of a deed subject to the tax imposed by this chapter or a transfer of a controlling interest in an entity subject to taxation under this chapter, the State Tax Assessor may examine any books, papers, records or memoranda of the grantor or grantee bearing upon the amount of tax payable, and may enforce that right of examination by subpoena. If the assessor determines that there is a deficiency of taxes due under this chapter, such deficiency must be assessed, together with interest and penalties, with notice to the persons liable, but no such assessment may be made more than 3 years after the date of recording or transfer.

Sec. 6. 36 MRSA §4641-J is amended to read:

Any register of deeds who, upon recording any deed or receiving a report of a transfer of a controlling interest upon which a tax is imposed by this chapter, fails to collect that tax or to obtain the declaration of value required by this chapter and does so with the intent of defeating the purposes of this chapter commits a civil violation for which a forfeiture not to exceed \$200 may be adjudged.

Sec. 7. 36 MRSA §§4641-K and 4641-L are amended to read:

36 § 4641-K. Falsifying declaration of value

Any person who knowingly falsifies the declaration of value prescribed by section 4641-D or refuses to permit the State Tax Assessor, or any of the State Tax Assessor's agents or representatives to inspect property in question or any relevant books, papers, records or memoranda within 3 years after recording or transfer of a controlling interest

subject to tax under this chapter, or knowingly alters, cancels or obliterates any part thereof, or knowingly makes any false entry therein is guilty of a Class E crime.

36 § 4641-L. No effect on recordation

Failure to comply with the requirements of this chapter shall in no way affect the validity of any recorded instrument or the validity of any recordation or transfer of a controlling interest.

Summary

This new draft contains the recommendations of the Joint Standing Committee on Taxation regarding its interim study of the application of the real estate transfer tax to transfers of controlling interests in entities with an interest in real property. The bill extends the real estate transfer tax to cover the transfer of controlling interests in entities with an interest in real property. The bill is intended to treat transfers of real estate by means of transfers of controlling interests in the same manner as transfers by deed. The tax is collected and revenues distributed in the same manner as the tax on deeds.

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