

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIRST LEGISLATURE

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Legislative Document

No. 1295

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H. P. 945

House of Representatives, February 13, 1963

Referred to Committee on Taxation. Sent up for concurrence and 1,500 ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Childs of Portland.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-THREE

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AN ACT Relating to a Net Income Tax Law for the State of Maine.

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

**R. S., c. 17-A, additional.** The Revised Statutes are amended by adding a new chapter 17-A, to read as follows:

**‘Maine Net Income Tax Act.**

**Sec. 1. Short title.** This chapter may be cited as the “Maine Net Income Tax Act”.

**Sec. 2. Arrangement and Classification.** No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this chapter, nor shall the descriptive matter or heading relating to any part, section, subsection or paragraph be given any legal effect.

**Sec. 3. Definitions.**

In general: For the purpose of this chapter

**I. Bank.** The word “bank” means a financial institution including national banking associations.

**II. Tax Assessor.** The term “Tax Assessor” means the State Tax Assessor.

**III. Corporation.** The word “corporation” includes associations, joint-stock companies and insurance companies.

**IV. Fiduciary.** The word “fiduciary” means a guardian, trustee, executor,

administrator, receiver, conservator or any person acting in any fiduciary capacity for any person or the estate of any deceased person.

V. Fiscal year. The words "fiscal year" mean an accounting period of 12 months ending on the last day of any month other than December.

VI. Includes. The words "includes" and "including" when used in a definition contained in this chapter shall not be deemed to exclude other things otherwise within the meaning of the word defined.

VII. Individual. The word "individual" means a natural person, whether married or unmarried, adult or minor, subject to payment of an income tax under the Internal Revenue Code.

VIII. Internal Revenue Code. The words "Internal Revenue Code" mean the Internal Revenue Code of the United States (53 Stat. 1) as amended or as hereafter amended, including all amendments thereto subsequent to March 29, 1949; as the code and amendments apply to the normal taxes and surtax on net incomes, but not including excess profits taxes, which amendments shall be operative for the purpose of this chapter as of the time they became operative or will become operative under Federal law.

IX. Person. The word "person" means an individual, a trust or estate, a partnership or a corporation.

X. Taxable year. The words "taxable year" mean the calendar year or the fiscal year ending during such calendar year upon the basis of which the net income is computed under this chapter. The words "taxable year" include, in the case of a return made for a fractional part of a year under this chapter, the period for which such return is made.

XI. Taxpayer. The word "taxpayer" means any person subject to a tax imposed by this chapter.

XII. Trade or business. The words "trade or business" include the engaging in or carrying on of any trade, business, profession, vocation, employment and rendition of services or commercial activity and include the performance of the functions of a public office.

XIII. References to Internal Revenue Code. Whenever the Internal Revenue Code is mentioned in this chapter, the particular portions or provisions thereof, as now in effect or hereafter amended, which are referred to shall be regarded as incorporated in this chapter by such reference and shall have effect as though fully set forth herein.

Whenever any portion of the Internal Revenue Code incorporated by reference refers to rules and regulations promulgated by the United States Commissioner of Internal Revenue, or hereafter so promulgated, they shall be regarded as regulations promulgated by the Tax Assessor under and in accordance with this chapter, unless and until the Tax Assessor promulgates specific regulations in lieu thereof conformable with this chapter.

Sec. 4. Taxable years to which applicable. This chapter shall apply to the taxable years beginning January 1, 1964, and be applicable to the entire current

year; to fractions of fiscal years ending in 1964 computed from January 1, 1964; to taxable years beginning in 1964 and ending in 1965; and to all ensuing taxable years.

**Sec. 5. Tax on individuals, fiduciaries, corporations and banks.**

**I. General rule.** There is hereby levied and there shall be collected and paid for each taxable year upon the net income of every resident and non-resident individual, fiduciary and bank required to make a return and pay a tax under the Federal income tax law, a tax equal to 5% of the total income tax that would be payable for the same taxable year to the United States under chapter 1 of subtitle A of the 1954 Internal Revenue Code, Public Law 591, 83rd Congress, 2nd Session, as amended, upon all income derived from sources within the State, without benefit of the deduction of the tax payable hereunder to the State. There is hereby levied and shall be collected and paid for each taxable year upon the net income of every resident and nonresident corporation required to make a return and any tax under the Federal income tax law, a tax equal to 7% of the total income tax that would be payable for the same taxable year to the United States under chapter 1 of the Sub Title A of the 1954 Internal Revenue Code, Public Law 591, 83rd Congress, 2nd Session, as amended, upon all income derived from sources within the State without benefit of the deductions of the taxes payable hereunder to the State. The following exceptions, modifications and additions to the general rule shall apply:

**A.** All taxpayers whose income includes a cost of living allowance which is exempt from the Federal income tax shall determine and include such amount as part of their income as if such cost of living allowance had not been exempt.

**B.** Standard exemptions, credits and deductions may not be claimed by persons who are not residents of Maine for the full 12 months of the tax year and they shall be subject to the following limitations:

1. Personal exemption and dependency credits claimed shall be allowed only in that proportion of the total exemptions and credits as the number of months said taxpayer is physically present in Maine bears to 12 months. A fractional part of the month shall be disregarded unless it amounts to more than  $\frac{1}{2}$  of a month in which case it shall be considered as a month.

2. Deductions claimed shall be allowed only if and to the extent that they are directly connected with:

- a. income which arises from sources within Maine; or
- b. property having a situs for taxation within Maine.

3. Contributions or gifts claimed shall be allowed only:

- a. in the amounts otherwise authorized in this chapter; and
- b. if such contributions or gifts were made within the tax year to Maine or any political subdivision thereof for use exclusively for public

purposes within Maine, or to a non-profit corporation or association formed or located within Maine.

II. Income from sources within the State. Income from sources within the State, for the purposes of this chapter, shall mean and include income from real or tangible personal property located in the State; income from a business, trade, or profession, and compensation from services rendered, within this State; income from stocks, bonds, notes, bank deposits, and other intangible personal property having a business or taxable situs in the State; rentals and royalties for the use of, or for the privilege of using in the State, patents, copyrights; secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like property having a taxable or business situs in the State; and income from intangible personal property located outside the State, including without limitation interest and dividends received by a resident of the State. "Resident" as used herein means and includes natural persons domiciled in the State, domestic corporations and firms or business organizations of any kind which are organized under the laws of and doing business in the State.

### III. Allocation and apportionment.

A. Definitions: As used in this subsection, unless the context otherwise requires:

1. "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property, if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.
2. "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.
3. "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.
4. "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, investment company or any type of insurance company.
5. "Non-business income" means all income other than business income.
6. "Sales" means all gross receipts of the taxpayer not allocated under paragraphs F to J.
7. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

B. Taxpayer liable. Any taxpayer having income from business activity which is taxable both within and without this State or income from any other sources both within and without this State shall allocate and apportion his net income as provided in this subsection.

**C. Taxability in other state.** For purposes of allocation and apportionment of income under this subsection a taxpayer is taxable in another state if in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax, or that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether in fact, the state does or does not.

**D. Direct allocation.** If a taxpayer's gross income is derived from sources both within and without the State and the part within is so separate and distinct from and unconnected with the part without that the net income from the part within can be determined without regard to the part without, then the part without the state shall not be considered in computing the income tax and paragraphs K to S shall not be applicable.

**E. Employees of interstate carriers.** The tax levied shall apply to that portion of the voyage pay of vessel personnel of interstate carriers engaged in the Maine trade which is earned in the waters of the State. The tax shall likewise apply to that portion of the pay earned in the State of the personnel of carriers operating vehicles or airplanes on land or in the air on routes to and from the State. In determining portion of the voyage pay of vessel personnel earned in the waters of Maine, the method of allocation provided for in paragraph T herein shall be used.

**F. Allocation of non-business income.** Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute non-business income, shall be allocated as provided in paragraphs G to J.

**G. Net rents and royalties.**

1. Net rents and royalties from real property located in this State are allocable to this State.
2. Net rent and royalties from tangible personal property are allocable to this State.
  - a. if and to the extent that the property is utilized in this State, or
  - b. in their entirety if the taxpayer's commercial domicile is in this State and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.
3. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

**H. Capital gains and losses.**

1. Capital gains and losses from sales of real property located in this State are allocable to this State.
  2. Capital gains and losses from sales of tangible personal property are allocable to this State if
    - a. the property had a situs in this state at the time of the sale, or
    - b. the taxpayer's commercial domicile is in this State and the taxpayer is not taxable in the state in which the property had a situs.
  3. Capital gains and losses from sales of intangible personal property are allocable to this State if the taxpayer's commercial domicile is in this State.
- I. Interest and dividends. Interest and dividends are allocable to this State if the taxpayer's commercial domicile is in this State.
- J. Patent and copyright royalties.
1. Patent and copyright royalties are allocable to this State:
    - a. if and to the extent that the patent or copyright is utilized by the payer in this State, or
    - b. if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.
  2. A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.
  3. A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.
- K. Allocation of business income. All business income which cannot be directly apportioned and allocated to this State shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.
- L. Property factor. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.
- M. Valuation of property. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at 8 times the net

annual rental rate. Net annual rental rate is the annual rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals.

**N. Average value of property.** The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the Tax Assessor may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

**O. Payroll factor.** The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

**P. Compensation paid in State.** Compensation is paid in this State if:

1. the individual's service is performed entirely within the State; or
2. the individual's service is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State; or
3. some of the service is performed in the state and the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

**Q. Sales factor.** The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this State during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

**R. Situs of sales of tangible personal property.** Sales of tangible personal property are in this State if:

1. the property is delivered or shipped to a purchaser, other than the United States government, within this State regardless of the f.o.b. point or other condition of the sale; or
2. the property is shipped from an office, store, warehouse, factory, or other place of storage in this State and the purchaser is the United States government or the taxpayer is not taxable in the state of the purchaser.

**S. Situs of sales of other than tangible personal property.** Sales, other than sales of tangible personal property, are in this State if:

1. the income-producing activity is performed in this State; or
2. the income-producing activity is performed both in and outside this State and a greater proportion of the income-producing activity is performed in this State than in any other state, based on costs of performance.



T. Determination of property and payroll factors for freight and passenger carriers. The value of vessels operating on the high seas and compensation of employees engaged in operating such vessels shall be apportioned to the State in the ratio which the number of days spent in ports within the State bears to the total number of days spent in ports within and without the State. The term "days spent in ports" shall not include periods when ships are tied up because of strikes or withheld from the Maine service for repairs, or because of seasonal reduction of service. Days in port shall be computed by dividing the aggregate number of hours in all ports by 24. The value of aircraft and automotive vehicles operating as freight and passenger carriers from, to and within the State and compensation of employees engaged in such operations, shall be apportioned to the State in the ratio which the number of days during which such services are rendered with the State bears to the total number of days during which such services are rendered within and without the State.

1. Apportionment by Tax Assessor. If the allocation and apportionment provisions of this paragraph do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for or the Tax Assessor may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- a. the exclusion of any one or more of the factors;
- b. the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or
- c. the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

The Tax Assessor is specifically authorized to use revenue miles traveled both within and without the State as a factor in apportioning the income of carriers, if in the opinion of the Tax Assessor, the use of such factor would better represent the extent of the carrier's business activity in the State. The Tax Assessor may promulgate proper apportionment rules and regulations in conformity with this paragraph for general application in similar cases. In the case of 2 or more organizations, trades or businesses owned or controlled directly or indirectly by the same interest, the Tax Assessor is authorized to distribute, apportion or allocate the tax where such action is necessary to prevent evasion of payment.

IV. Exemptions. The tax levied hereunder shall not apply to the pay of members of the armed forces of the United States or auxiliary branches thereof.

V. Political subdivision prohibited from levying and collecting individual net income tax. No tax may be levied and collected upon the net income of resident or non-resident individuals by any municipality or any other political subdivision of the State.

Sec. 6. Credits against tax.

I. Tax withheld at source. The amount so deducted and withheld as tax

under section 8 during any calendar year shall be allowed as a credit to the taxpayer against the tax imposed by section 5.

**Sec. 7. Returns and payment of tax.**

**I. Tax returns.** Every individual, fiduciary, partnership, corporation and bank required to make a return under the Internal Revenue Code, shall at the same time render to the Tax Assessor a return setting forth:

**A.** The amount of tax and the balance of tax due or over-payment of tax as reported on returns made to the Collector of Internal Revenue; the amount of tax due under this chapter, less credits claimed against tax; such other information for the purpose of carrying out this chapter as may be prescribed by the Tax Assessor. The return shall either be an oath or contain a written declaration that it is made under the penalty of perjury, and the Tax Assessor shall prescribe forms accordingly. Sections 51, 52, 53, 58, 59 and 60 of the Internal Revenue Code shall be adopted insofar as such provisions are consistent with other provisions of this chapter.

**II. Payment of tax.** The total amount of tax imposed by this chapter shall be due and payable to the Tax Assessor at the same time and in the same manner as the tax payable to the United States Collector of Internal Revenue under sections 56 and 59 of the Internal Revenue Code.

**III. Federal income tax return.** Any taxpayer, upon request by the Tax Assessor, must furnish to the Tax Assessor a true and correct copy of any tax return which he has filed with the United States Collector of Internal Revenue. Every taxpayer must notify the Tax Assessor in writing of any alteration in, or modification of, his Federal income tax return and of any recomputation of tax or determination of deficiency, whether with or without assessment. A full statement of the facts shall accompany this notice, which must be filed within 20 days after such modification, recomputation or determination of deficiency, and the taxpayer must pay the additional tax or penalty hereunder.

**IV. Overpayment, credit and refund.** The Tax Assessor is authorized to credit or refund all overpayments of taxes, all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that are found unjustly assessed or excessive in amount, or in any manner wrongfully collected. The Tax Assessor shall by means of rules and regulations specify the manner in which claims for credits or refunds shall be made, prescribe limitations and give notice of allowance or disallowance. These rules and regulations shall be based upon sections 321 and 322 of the Internal Revenue Code insofar as such provisions are consistent with other provisions of this chapter. When refund is allowed to a taxpayer, same shall be paid out of the General Fund on a warrant issued pursuant to a voucher approved by the Tax Assessor.

**Sec. 8. Collection of income tax at source.**

**I. Definitions.** As used in this section, the terms "wages," "payroll period", "employee", and "employer" shall have the meaning attributed to such terms

by subsections (a), (b), (c) and (d), respectively, of Section 1621 of the Internal Revenue Code.

II. Requirement of withholding. Every employer making payment of wages or salaries shall deduct and withhold a tax in the amount of 5% of the tax deducted and withheld under subchapter (D), Chapter 9 of the Internal Revenue Code, except that in the case of employees whose wage or salary includes a cost-of-living allowance which is exempt from the Federal income tax, the amount to be deducted and withheld hereunder shall be determined as if such cost-of-living allowance had not been so exempt. Every employer making a deduction and a withholding as outlined above, shall furnish to the employee upon request a record of the amount of tax withheld from such employee on forms to be prescribed, prepared and furnished by the Tax Assessor.

III. Rules applicable. The rules with respect to withholding of tax set forth in Section 1622 of the Internal Revenue Code shall apply with respect to this section as though fully set forth herein. Remittance of taxes withheld must be accompanied by returns on forms prescribed by the Tax Assessor.

IV. Payment of tax withheld. Every employer making payments of wages or salaries earned in Maine, regardless of the place where such payment is made,

A. shall be liable for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount of any such payment; and

B. must make return of and pay to the Tax Assessor quarterly, or at such other times as the Tax Assessor may allow, the amount of tax levied which, under this chapter, he is required to deduct and withhold. Upon failure of the employer to comply with this paragraph, section 11 shall apply.

V. Return and payment by governmental employer. If the employer is the United States or the State or a political subdivision thereof, or an agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages or salaries may be made by any officer of said employer having control of the payment of such wages or salaries or appropriately designated for that purpose.

#### Sec. 9. Publicity.

I. Secrecy of returns. Except when required in official investigation, or proceedings in court, and except as hereinafter provided, it shall be unlawful for any officer or employee of the State to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return under this chapter.

II. Returns inadmissible in evidence; exceptions. Neither the original tax return nor a copy thereof shall be admissible in evidence in any court unless offered either—

A. by the taxpayer who filed the return, or

B. by the State of Maine in an action to which the State is a party,

C. or as otherwise authorized by the Internal Revenue Code.

III. Copies to taxpayers. The Tax Assessor, upon written request, shall furnish to the taxpayer a copy of his return upon payment of a fee of \$1.

IV. Reciprocal exchange. The Tax Assessor may permit the proper officer of the United States or of any state, territory or possession of the United States or of the Dominion of Canada or of a province or territory therein imposing an income tax, or his authorized representative, to inspect income tax returns, filed with the Tax Assessor, or may furnish to such officer or representative a copy of any income tax return, provided such other jurisdictions grant substantially similar privileges to the Tax Assessor or his representative or to counsel for the State.

V. Statistics. Nothing herein shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports and the items thereof, or of the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by law, together with any relevant information which in the opinion of the Tax Assessor may assist in the collection of such delinquent taxes.

VI. Penalties for violation. Any offense against this section shall be a misdemeanor and shall be punishable by a fine not exceeding \$1,000 or by imprisonment for not more than 6 months, or by both.

#### Sec. 10. Review and assessment.

I. Review and determination of tax. As soon as practicable after the return is filed, the Tax Assessor shall examine it and determine the correct amount of the tax, and in case any error shall be disclosed by such examination, shall so notify the taxpayer by first class mail. The taxpayer may petition for redetermination of deficiency as provided in section 13, subsection I.

II. Assessment and collection. The same period of limitation upon the assessment and collection of taxes imposed under this chapter and the same exceptions thereto shall apply as are provided under Sections 275, 276 and 277 of the Internal Revenue Code.

Sec. 11. Addition to tax and penalties. In the case of any failure to make and file a return, or whenever the full amount of the tax or any portion or deficiency thereof, as finally determined by the Tax Assessor, has not been paid, as required by this chapter, unless it be shown that such failure is due to reasonable cause, and not due to willful neglect, there shall be added to the tax: 5% if the failure is for not more than 30 days, with an additional 5% for each additional 30 days, or fraction thereof, during which such failure continues, not exceeding 25% in the aggregate. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added should be collected in the same manner as the tax. In all cases of delinquency the legal rate of interest shall be assessed.

**Sec. 12. Enforcement.**

**I. Action to collect.** Any tax due and unpaid under this Act, any interest, penalty, additional amount, or addition to such tax, and any tax or any interest, penalty, additional amount, or addition to such tax which has been erroneously refunded shall constitute a debt to the State and may be collected by lien foreclosure or sued for and recovered in any proper form of action, in the name of the State of Maine, in any court of competent jurisdiction. The remedy herein shall be in addition to any and all other existing remedies.

**II. Lien.**

**A. Property subject to lien.** If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount, including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto, shall be a lien in favor of the State upon all property, and rights to property, whether real or personal, belonging to such person.

**B. Period of lien.** The lien shall arise at time of delinquency and shall continue until the liability for such amount is satisfied or the lien is foreclosed.

**C. Validity against certain persons.** Such lien shall not be valid as against any mortgagee or other lien holder, pledgees, purchaser or judgment creditor until notice thereof has been filed in the office of the clerk of the town or the registry office of the county, within which the property subject to such lien is situated.

1. When a notice of such lien is filed, the clerk or register shall forthwith enter the same in an alphabetical Maine Tax Lien Index, showing on one line the name and residence of the taxpayer named in such notice, the Tax the amount of tax, including interest, penalty, additional amount or addition to such tax, and costs. He shall file and keep all original notices so Assessor's serial number of such notice, the date and hour of filing, and filed in numerical order in a file or files, designated Maine Tax Lien Notices.

2. When a certificate of discharge of any tax lien issued by the Tax Assessor or any of his authorized deputies or agents, is filed in the office of the clerk or register, where the original notice of lien is filed, said clerk or register shall enter the same with date of filing in said Maine Tax Lien Index on the line where notice of the lien so discharged is entered and permanently attach the original certificate of discharge to the original notice of lien.

3. Said Maine Tax Lien Index and file or files for said Maine Tax Lien Notices shall be furnished to the clerk or register in the manner now provided by law for the furnishing of books in which deeds are recorded.

**D. Action to enforce lien.** In any case where there has been a refusal or neglect to pay any tax, including any interest, penalty, additional amount or addition to such tax, together with any costs that may accrue in addition

thereto, the Attorney General, at the request of the Tax Assessor, may file an action in the Superior Court to enforce the lien of the State for such tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property owned by the delinquent, or in which he has any right, title or interest, to the payment of such tax. Such action shall be commenced and pursued in like manner as is now provided by law for the foreclosure of liens. Such action may be commenced at any time within 6 years following the date such lien arises.

III. Suspension of licenses. In addition to the other penalties imposed herein, any person authorized to conduct any business by virtue of a license duly issued to him under the laws of Maine, whether he be a resident or not, shall, if he fails to pay the tax levied under section 5, subsection I, suffer suspension of this said license or licenses until the tax imposed by this chapter, together with penalties, is paid in full.

IV. Distraint on personal property. It shall be lawful for the Tax Assessor, or any of his agents or deputies, to collect any taxes, the word "taxes", as used in this section, including any deficiencies in respect of such taxes; with such interest, penalties, and other additional amounts as are permitted by law, by distraint and sale, in the manner provided herein, of the property of any person liable to pay any taxes, interest, penalties or other additional amounts, who neglects or refuses to pay the same within 10 days from the mailing of notice and demand for payment thereof and who has not appealed from the assessment of such taxes, interest, penalties and other additional amounts pursuant to section 13. The term "property" as used herein shall be construed to mean personal property, both tangible and intangible, and right, title, and interest to such personal property, and shall include, without limitation, stocks, securities, bank accounts and evidences of debt.

A. Property exempt from restraint. Notwithstanding any provision of law exempting property from execution, there shall be exempt from distraint and sale under this chapter, if belonging to the head of a family, the following property only:

1. The school books and wearing apparel necessary for such family;
2. Arms for personal use;
3. One cow, 2 hogs, 5 sheep and the wool thereof, provided the aggregate market value of said sheep shall not exceed \$50;
4. The necessary food for such cow, hogs and sheep, for a period not exceeding 30 days;
5. Fuel to an amount not greater in value than \$25;
6. Provisions to an amount not greater than \$50;
7. Household furniture kept for use to an amount not greater than \$300; and
8. The books, tools or implements of a trade or profession to an amount not greater than \$100.

**B. Levy.** In case of neglect or refusal to pay taxes or deficiencies as provided, the Tax Assessor may levy, or, by warrant issued under his own hand, authorize a deputy or agent to levy upon, seize and sell all property, except such as is exempt belonging to such person, for the payment of the amount due, with interest and penalty for nonpayment, and of such further amount as shall be sufficient for the fees, costs, and expenses of such levy.

**C. Proceedings on distraint.** When distraint is made, as provided in subsection IV:

1. The deputy or agent charged with the collection shall make or cause to be made an account of the property distrained, a copy of which, signed by such deputy or agent making such distraint, shall be left with the owner or possessor of such property, or at his dwelling or usual place of business, with some person of suitable age and discretion, if such can be found, or if the taxpayer is a corporation, with any officer, manager, general agent or agent for process, with a note of the amount demanded and the time and place of sale; and

2. Forthwith cause a notice of the time and place of sale, together with a description of the property distrained, in a newspaper within the judicial division wherein such distraint is made, or in lieu thereof and in the discretion of the Tax Assessor, cause such notice to be publicly posted in 3 public places within 5 miles of the place where the sale is to be held, one of which notices to be posted at the post office nearest to the place where the sale is to be made.

3. The time of sale shall not be less than 10 nor more than 60 days from the date of such notification to the owner or possessor of the property, and the place proposed for the sale shall not be more than 5 miles distant from the place of making such distraint. Such sale may be adjourned from time to time by the said deputy or agent, if he deems it advisable, but not for a time to exceed in all 90 days.

**D. Property for account of State.** When any property is advertised for sale under distraint, the deputy or agent making the seizure shall proceed to sell such property at public auction, offering the same at not less than a fair minimum price, including the expenses of making the seizure and of advertising the sale, and if the amount bid for such property at the sale is not equal to the fair minimum price so fixed, the agent or deputy conducting the sale may declare such property to be purchased by him for the State. The property so purchased may be sold by the deputy or agent under such regulations as may be prescribed by the Tax Assessor.

**E. Redemption of property.** In any case of distraint for the payment of taxes or deficiencies, the property so distrained shall be restored to the owner or possessor, if, prior to the sale, payment of the amount due is made to the proper deputy or agent charged with the collection, together with the fees and other charges, but in case of nonpayment, the said deputy or agent shall proceed to sell the said property at public auction.

**F. Certificate of sale.** In all cases of sale, as aforesaid, the certificate of sale:

1. shall be prima facie evidence of the right of the deputy or agent to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale; and
2. shall transfer to the purchaser all right, title and interest of such delinquent in and to the property sold; and
3. where such property consists of stocks, shall be notice, when received to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association, to record the transfer on their books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not; and
4. where the subject of sale is securities or other evidence of debt, shall be a good and valid receipt to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt.

**G. Sale of indivisible property.** When any property liable to distraint for taxes is not divisible, so as to enable the collector by sale of a part thereof to raise the whole amount of the tax or deficiency, with all costs and charges, the whole of such property shall be sold, and the surplus of the proceeds of the sale, after making allowances for the amount of the tax or deficiency, interest, penalties and additions thereto, and for the costs and charges of the distraint and sale, shall be surrendered to the owner of such property.

**H. Successive seizures.** Whenever any property which is seized and sold by virtue of the foregoing provisions is not sufficient to satisfy the claim of the State for which distraint or seizure is made, the deputy or agent may, thereafter, and as often as the same may be necessary proceed to seize and sell in like manner, any other property liable to seizure of the taxpayer against whom such claim exists, until the amount due from such taxpayer, together with all expenses, is fully paid.

**I. Surrender of property subject to distraint.** Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the deputy or agent making such levy, surrender such property or rights to such deputy or agent, unless such property or right is, at the time of such demand, subject to an attachment under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the State in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes or deficiencies, including penalties and interest for the collection of which such levy has been made, together with costs and interest from the date of such levy. The term "person" as used in this paragraph includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer,



employee or member is under a duty to perform the act in respect of which the violation occurs.

**J. Production of books.** All persons, and officers of companies or corporations are required, on demand of an agent or deputy about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due.

**K. Fees and charges.** The Tax Assessor shall by regulation determine the fees and charges to be allowed in all cases of distraint, and shall have power to determine whether any expense incurred in making any distraint or seizure was necessary.

**L. Period of limitation upon distraint.** The period of limitation upon distraint shall be the same as provided under Sections 276 (c) and 277 of the Internal Revenue Code. In determining the running of any period of limitation in respect of distraint, the distraint shall be held to have begun on the date on which the levy upon property is made.

**M. Collection by distraint not exclusive.** This chapter shall not be deemed exclusive but shall be in addition to any and all other existing remedies provided by law for the enforcement of the revenue laws of the State.

**N. Action versus State.** The Tax Assessor may be made a party defendant in a civil action by any person aggrieved by the unlawful seizure or sale of his property but only the State shall be responsible for any final money judgment secured against the Tax Assessor, and said judgment shall be paid or satisfied out of the General Fund.

**O. Rules and regulations.** The Tax Assessor shall prescribe and publish all needful rules and regulations for the enforcement of this section.

### Sec. 13. Taxpayers' remedies.

**I. Petition of Tax Assessor.** Any person aggrieved by the action of the Tax Assessor in fixing the amount of any tax or in imposing any penalty hereunder, may apply to the Tax Assessor within 60 days from the date of the notice required to be given to him by the Tax Assessor, giving notice of such grievance, and request a hearing thereon. At such hearing the Tax Assessor may subpoena witnesses and may administer oaths and make such inquiries as may be necessary to determine the amount of the tax due to the State, and if a correction is warranted, the Tax Assessor shall make same after such hearing.

**II. Appeal to court.** Within 30 days after hearing and decision by the Tax Assessor, the taxpayer may file a complaint of an equitable nature in the Superior Court in the county in which he resides, naming the Tax Assessor as defendant, setting forth the facts, and stating reasons why such action is alleged to be erroneous, and praying relief therefrom, and the clerk of such court shall thereupon issue summons in the regular manner. The taxpayer shall have access to the Tax Assessor's file in the matter for preparation of his case. If, after the case is heard, it shall appear that the tax was correct,

the court shall confirm the same; or, if incorrect, the court shall determine the proper amount of the tax; and if it shall appear that the plaintiff, by reason of the payment of the tax, is entitled to recover the same or any part thereof, the court shall order its repayment, without interest, and the Tax Assessor shall forthwith issue a voucher for same, attaching a certified copy of the judgment to the voucher.

**Sec. 14. Administrative powers.**

**I. Tax Assessor to administer.** The Tax Assessor is hereby required to administer the provisions of this chapter.

**II. Returns by Tax Assessor.** If any taxpayer fails to file a return at the time required by law or by regulation made under authority of law, or makes an erroneous or fraudulent return, the Tax Assessor shall proceed to assess the tax and make a return from any information he can obtain. Any return so made and subscribed by the Tax Assessor shall be prima facie good and sufficient for all legal purposes.

**III. Rules and regulations.** The Tax Assessor shall prescribe and furnish all necessary forms, and promulgate and publish all needful rules and regulations in plain and concise language conformable herewith for the assessment and collection of any tax herein imposed. He shall apply as far as practicable the administrative and judicial interpretations of the Federal income tax law. The Tax Assessor shall prepare a concise statement of the contents of the Code sections referred to herein for the information of the taxpayer and make the same available to the taxpayer making a return.

**IV. Disposal of tax money.** All moneys collected by the Tax Assessor under this chapter shall with reasonable promptness be credited to the General Fund.

**Sec. 15. Penalties.**

**I. Failure to file returns, submit information, or pay tax.** Any person required under this chapter to pay any estimated tax or tax, or required by law to make a return or declaration, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any estimated tax or tax imposed by this chapter, who willfully fails to pay such estimated tax or tax, make such return or declaration, keep such records, or supply such information, at the time or times required by law, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be punished by a fine of not more than \$1,000, or by imprisonment for not more than 11 months, or by both, together with the costs of prosecution.

**II. Failure to collect and pay over tax, or attempt to defeat or evade tax.** Any person required under this chapter to collect, account for and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be punished by a fine of not more than \$1,000, or by imprisonment for not more than 11 months, or by both, together with the costs of prosecution.

**III. False return.** Any individual who willfully makes and subscribes a return which he does not believe to be true and correct as to every material matter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than 11 months, or by both.

**IV. Person defined.** The term "person" as used in this section includes, but is not limited to, an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs.'

#### STATEMENT OF FACTS

It is estimated that this tax will produce more than \$9,000,000 per year.