

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 410

H. P. 290

House of Representatives, January 26, 1967

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

BERTHA W. JOHNSON, Clerk

Presented by Mr. Cottrell, Jr. of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

AN ACT Providing for a State Income Tax.

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

Sec. 1. R. S., T. 36, part 8, additional. Title 36 of the Revised Statutes is amended by adding a new part 8, to read as follows:

Part 8

INCOME TAXES

CHAPTER 801

GENERAL PROVISIONS AND DEFINITIONS

§ 5101. Short title

This part shall be known and may be cited as the "Personal Income Tax Law."

§ 5102. Definitions

The following definitions shall apply throughout this part, except as the context may otherwise require:

1. Assessor. "Assessor" shall mean the State Tax Assessor.
2. Nonresident estate or trust. "Nonresident estate or trust" shall mean an estate or trust which is not a resident, estate or trust.
3. Nonresident individual. "Nonresident individual" shall mean an individual who is not a resident.
4. Resident estate or trust. "Resident estate or trust" shall mean:

- A. The estate of a decedent who at his death was domiciled in this State;
 - B. A trust created by will of a decedent who at his death was domiciled in this State;
 - C. A trust created by, or consisting of property of, a person domiciled in this State; or
 - D. The estate of any resident individual for whom a fiduciary is acting in any capacity.
5. Resident individual. "Resident individual" shall mean an individual:
- A. Who is domiciled in Maine, unless he maintains no permanent place of abode in this State;
 - B. Who is not domiciled in Maine, but maintains a permanent place of abode in this State and spends in the aggregate more than 183 days of the taxable year in this State, unless such individual is in the Armed Forces of the United States during an induction period.
6. Taxpayer. "Taxpayer" shall mean any individual or fiduciary subject to a tax imposed by this part, or whose income in whole or in part is subject to a tax imposed by this part and does not include corporations.
7. Other definitions. "Other definitions": Any "term" used in this part shall have the same meaning as when used in a comparable sense in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required. Any reference in this part to the laws of the United States shall mean the Internal Revenue Code of 1954, as amended up to December 31, 1965, or, beginning with the year 1966, at the option of the taxpayer, the Internal Revenue Code of 1954, as amended up to December 31st of the year preceding the taxable year for which the return is filed.

CHAPTER 803

IMPOSITION OF TAX

§ 5111. Imposition

A tax determined in accordance with the rates set forth in section 5112 is imposed for each taxable year on the Maine taxable income of every individual, estate and trust as defined in section 5102.

1. Partnership or unincorporated business. A partnership or unincorporated business as such shall not be subject to the tax in this part. Individuals carrying on the business as partners or unincorporated businesses shall be liable for the tax in the part only in their separate or individual capacities.

2. Association or trust. An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes shall not be subject to tax under this part.

3. Exempt from federal income tax. A trust or other unincorporated organization which by reason of its purpose or activities is exempt from federal income tax shall be exempt from tax under this part.

§ 5112. Rate of tax

The tax hereby imposed by this part shall be determined in accordance with the following table:

Taxable Income	Tax Rate
Not over \$2,000	0%
\$2,000 but not over \$5,000	\$10 plus 2% of excess over \$2,000
\$5,000 but not over \$10,000	\$70 plus 3% of excess over \$5,000
\$10,000 but not over \$25,000	\$220 plus 4% of excess over \$10,000
\$25,000 but not over \$50,000	\$820 plus 5% of excess over \$25,000
\$50,000 or more	\$2,070 plus 6% of excess over \$50,000

§ 5113. Alternative tax

If the taxpayer's adjusted gross income for the taxable year is less than \$5,000 and the taxpayer so elects, there shall be levied, collected and paid for such year a tax determined on the basis of tables to be prepared and furnished by the Assessor, which tax shall be substantially equivalent to the tax provided in section 5112 and in lieu thereof.

CHAPTER 805

COMPUTATION OF TAXABLE INCOME

§ 5121. Maine taxable income of an individual

1. General. The Maine taxable income of a resident or nonresident individual shall be his Maine adjusted gross income less his Maine deduction and Maine personal exemptions, as determined under this part.

2. Husband and wife.

A. If the federal taxable income of husband or wife is determined on a separate federal return, their Maine taxable incomes shall be separately determined.

B. If the federal taxable income of husband and wife is determined on a joint federal return, or if neither files a federal return:

(1) Their tax shall be determined on their joint Maine taxable income, or

(2) Separate taxes may be determined on their separate Maine taxable incomes if they so elect and if they comply with the requirements of the Assessor, in setting forth information on a single form.

C. If either husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate Maine taxable incomes on such single or separate forms as may be required by the Assessor, unless both elect to determine their joint Maine taxable income as if both were residents.

§ 5122. Maine adjusted gross income**1. Resident individual:**

A. The Maine adjusted gross income of a resident individual shall be his federal adjusted gross income as defined in the Internal Revenue Code as defined in section 5102 with the modifications specified in this section.

B. Modifications increasing federal adjusted gross income. There shall be added to federal adjusted gross income:

(1) Interest income on obligations of any state other than this State, or of a political subdivision of any such other state unless created by compact or agreement to which this State is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this part, to the extent deductible in determining federal adjusted gross income.

C. Modifications reducing federal adjusted gross income. There shall be subtracted from federal adjusted gross income:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(3) Interest or dividend income on obligations or securities to the extent exempt from income tax under the laws of this State authorizing the issuance of such obligations or securities but includible in gross income for federal income tax purposes.

2. Nonresident individual:

A. Maine adjusted gross income. The Maine adjusted gross income of a nonresident individual shall be the sum of the following:

(1) The net amount of items of income, gain, loss and deduction, entering into his federal adjusted gross income, as defined in the laws of the United States for the taxable year, derived from or connected with Maine sources, including:

(a) His distributive share of partnership income, gain, loss and deduction, determined under section 5125, and

(b) His share of estate or trust income, gain, loss and deduction, determined under section 5126 and 5127.

(2) The portion of the modifications described in subsection 1 which relates to income derived from Maine sources, including any modifications attributable to him as a partner.

B. Income and deductions from Maine sources.

(1) Items of income, gain, loss and deduction derived from or connected with Maine sources shall be those items attributable to:

(a) The ownership of any interest in real or tangible personal property in this State; or

(b) A business, trade, profession or occupation carried on in this State.

(2) Income from intangible personal property, including annuities, dividends, interest and gains from the disposition of intangible personal property shall constitute income derived from Maine sources only to the extent that such income is from property employed in a business, trade, profession or occupation carried on in this State.

(3) Deductions with respect to capital losses, net long-term capital gains and net operating losses shall be based solely on income, gain, loss and deduction derived from or connected with Maine sources, under regulations of the Assessor, but otherwise shall be determined in the same manner as the corresponding federal deductions.

C. Income and deductions partly from Maine sources. If a business, trade, profession or occupation is carried on partly within and partly without this State, as determined under regulations of the Assessor the items of income, gain, loss and deduction derived from or connected with Maine sources shall be determined by apportionment and allocation under each regulation.

D. Purchase and sale for own account. A nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of his trade or business, shall not be deemed to carry on a business, trade, profession or occupation in this State solely by reason of the purchase and sale of property for his own account.

E. Husband and wife. If husband and wife determine their federal income tax on a joint return but determine their Maine income taxes separately, they shall determine their Maine adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

§ 5123. Maine deduction

The Maine deduction of a resident or nonresident individual shall be his Maine standard deduction unless he elects to deduct his Maine itemized deduction under the conditions set forth.

1. **Maine standard deduction.** The Maine standard deduction shall be on the same basis as the federal standard deduction to which the taxpayer is entitled for the taxable year for federal income tax purposes.

2. **Maine itemized deduction.**

A. Resident individual;

(1) If federal taxable income of a resident individual is determined by itemizing deductions from his federal adjusted gross income, he may elect

to deduct his Maine itemized deduction in lieu of his Maine standard deduction. The Maine itemized deduction of a resident individual means the total amount of his deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year, with the modification specified in this section.

(2) Husband and wife.

(a) A husband and wife, both of whom are required to file returns under this part, shall be allowed Maine itemized deductions only if both elect to take Maine itemized deductions.

(3) Modifications reducing federal itemized deductions. The total amount of deductions from federal adjusted gross income shall be reduced by the amount of such federal deductions for:

(a) Income taxes imposed by this State or any other state; and

(b) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this part.

(4) Partners. The amounts of modifications under division (3) required to be made by a partner with respect to items of deductions of a partnership shall be determined under section 5125.

B. Nonresident individual:

(1) If federal taxable income of a nonresident individual is determined by itemizing deductions from his federal adjusted gross income, he may elect to deduct his Maine itemized deduction in lieu of his Maine standard deduction.

(a) The Maine itemized deduction of a nonresident individual shall be the same as for a resident individual determined under subsection 2; except that if (A) his Maine adjusted gross income determined under section 5122 as a nonresident is exceeded by (B) the Maine adjusted gross income he would be required to report under section 5122 if he were a resident, by more than \$100, his Maine itemized deduction shall be limited by the percentage which (A) is of (B).

§ 5124. Maine personal exemptions

1. Resident or nonresident. A resident or nonresident individual shall be allowed a Maine exemption of \$600 for each exemption for which he is entitled to a deduction for the taxable year for federal income tax purposes.

2. Husband and wife. If the Maine income taxes of a husband and wife are separately determined but their federal income tax is determined on a joint return, each of them shall be separately entitled to a Maine exemption of \$600 for each federal exemption to which he would be separately entitled for the taxable year if their federal income taxes had been determined on separate returns.

§ 5125. Partners**1. Resident partners:**

A. Partner's modifications. In determining Maine adjusted gross income and Maine taxable income of a resident partner, any modification described in section 5122, subsection 1, paragraphs B and C, or section 5123, subsection 1, paragraph A, subparagraphs (1) and (2) which relates to an item of partnership income, gain, loss or deduction shall be made in accordance with the partner's distributive share, for federal income tax purposes, of the item to which the modification relates. Where a partner's distributive share of any such item is not required to be taken into account separately for federal income tax purposes, the partner's distributive share of such item shall be determined in accordance with his distributive share, for federal income tax purposes, of partnership taxable income or loss generally.

B. Character of items. Each item of partnership income, gain, loss or deduction shall have the same character for a partner under this part as for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner as if realized directly from the source from which realized by the partnership or incurred in the same manner as incurred by the partnership.

C. Maine tax avoidance or evasion. Where a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this part, the partner's distributive share of such item, and any modification required with respect thereto, shall be determined as if the partnership agreement made no special provision with respect to such item.

2. Nonresident partners.**A. Portion derived from Maine sources.**

(1) In determining Maine adjusted gross income of a nonresident partner of any partnership, there shall be included only the portion derived from or connected with Maine sources of such partner's distributive share of items of partnership income, gain, loss and deduction entering into his federal adjusted gross income, as such portion shall be determined under regulations of the Assessor consistent with the applicable rules of section 5122.

(2) If a nonresident partner of any partnership elects to deduct his Maine itemized deduction under section 5123, in determining his Maine taxable income, there shall be attributed to his distributive share of partnership items of deduction from federal adjusted gross income which are deductible by him under section 5123, subsection 2, paragraph A, whichever is applicable.

(3) In lieu of separate returns from the nonresident partners of any partnership, the Assessor may at his discretion accept a single return for all nonresident partners of any partnership prepared on a basis consistent with this section.

B. Special rules as to Maine sources. In determining the sources of a non-resident partner's income, no effect shall be given to a provision in the partnership agreement which

(1) Characterizes payments to the partner as being for services or for the use of capital, or

(2) Allocates to the partner, as income or gain from sources outside Maine, a greater proportion of his distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside Maine to partnership income or gain from all sources, or

(3) Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with Maine sources than his proportionate share for federal income tax purposes, of partnership loss or deduction generally.

C. Partner's modifications. Any modification described in section 5122, subsection 1, paragraphs B and C, which relates to an item of partnership income, gain, loss or deduction, shall be made in accordance with the partner's distributive share for federal income tax purposes of the item to which the modification relates, but limited to the portion of such item derived from or connected with Maine sources.

D. Application of rules for resident partners to nonresident partner.

(1) A nonresident partner's distributive share of items shall be determined under subsection 1, paragraph A.

(2) The character of partnership items for a nonresident partner shall be determined under subsection 1 of paragraph B.

(3) The effect of a special provision in a partnership agreement having the principal purpose of avoidance or evasion of tax under this part shall be determined under subsection 1, paragraph C.

§ 5126. Estates and trusts

1. Resident estates and trusts. The Maine taxable income of a resident estate or trust means its federal taxable income as defined in the laws of the United States for the taxable year, with the following modifications:

A. There shall be added or subtracted, as the case may be, the share of the estate or trust in the Maine fiduciary adjustment determined under section 5127.

2. Nonresident estates and trusts. The Maine taxable income of a non-resident estate or trust shall be determined as follows:

A. Items in distributable net income. There shall be determined its share of income, gain, loss and deduction from Maine sources under section 5127, relating to items entering into the definition of distributable net income.

B. Items not in distributable net income. There shall be added or subtracted, as the case may be, the amount derived from or connected with Maine sources of any income, gain, loss and deduction recognized for federal income tax purposes but excluded from the definition of federal distributable net income of

the estate or trust. The source of such income, gain, loss and deduction shall be determined in accordance with the applicable rules of section 5122, subsection 2 and section 5123, subsection 2, paragraph B as in the case of a nonresident individual.

C. Special Maine source rules. Deductions with respect to capital losses, net long-term capital gains and net operating losses shall be based solely on income, gains, losses and deductions derived from or connected with Maine sources, under regulations of the Assessor, but otherwise determined in the same manner as the corresponding federal deductions.

3. Tax charge against estate. The tax imposed upon a fiduciary by this part shall be charge against the estate or trust.

§ 5127. Fiduciary adjustment

1. Share of resident estate, trust or beneficiary in Maine fiduciary adjustment.

A. General. An adjustment shall be made in determining Maine taxable income of a resident estate or trust under section 5126 or Maine adjusted gross income of a resident beneficiary of any estate or trust in the amount of the share of each in the Maine fiduciary adjustment as determined in this section.

B. Definition. The Maine fiduciary adjustment shall be the net amount of the modifications described in section 5122, subsection 1, paragraphs B and C and section 5123, subsection 2, paragraph A, which relate to items of income, gain, loss or deduction of an estate or trust.

C. Shares of a Maine fiduciary adjustment.

(1) The respective shares of an estate or trust and its beneficiaries, including, solely for the purpose of this allocation, nonresident beneficiaries, in the Maine fiduciary adjustment shall be in proportion to their respective shares of federal distributable net income of the estate or trust.

(2) If the estate or trust has no federal distributable net income for the taxable years, the share of each beneficiary in the Maine fiduciary adjustment shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the Maine fiduciary adjustment shall be allocated to the estate or trust.

2. Share of nonresident estate, trust or beneficiary in income from Maine sources.

A. General. The share of a nonresident estate or trust and the share of a nonresident beneficiary of any estate or trust, in estate or trust income, gain, loss and deduction from Maine sources shall be determined as follows:

(1) Items of distributable net income from Maine sources. There shall be determined the items of income, gain, loss and deduction, derived from or connected with Maine sources, which enter into the definition of federal distributable net income of the estate or trust for the taxable year, including such items from another estate or trust of which the first estate or

trust is a beneficiary. Such determination of source shall be made in accordance with the applicable rules of section 5122, subsection 2 and section 5123, subsection 2 as in the case of a nonresident individual.

(2) Addition or subtraction of modifications. There shall be added or subtracted, as the case may be, the modifications described in section 5122, subsection 1, paragraphs B and C to the extent relating to items of income, gain, loss and deduction, derived from or connected with Maine sources, which enter into the definition of federal distributable net income, including such items from another estate or trust of which the first estate or trust is a beneficiary. No modification shall be made under this subsection which has the effect of duplicating an item already reflected in the definition of federal distributable net income.

(3) Allocation among estate or trust and beneficiaries.

(a) The amounts determined under subparagraphs (1) and (2) shall be allocated among the estate or trust and its beneficiaries, including, solely for the purpose of this allocation, resident beneficiaries, in proportion to their respective shares of federal distributable net income.

(b) The amounts so allocated shall have the same character under this part as for federal income tax purposes. Where an item entering into the computation of such amounts is not characterized for federal income tax purposes, it shall have the same character as if realized directly from the source from which realized by the estate or trust, or incurred in the same manner as incurred by the estate or trust.

CHAPTER 807

ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

§ 5131. Accounting periods and methods

1. Accounting periods. A taxpayer's taxable year under this part shall be the same as his taxable year for federal income tax purposes.

2. Change of accounting periods. If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of this part shall be similarly changed. If a taxable period of less than 12 months results from a change of taxable year, the return for the period of less than 12 months shall be reported on a basis consistent with the federal requirements.

3. Accounting methods. A taxpayer's method of accounting under this part shall be the same as his method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, Maine taxable income shall be computed under such method as in the opinion of the Assessor clearly reflects income.

4. Change of accounting methods. If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this part shall be similarly changed.

CHAPTER 809

§ 5131. Persons required to file

1. Individuals. On or before the 15th day of the 4th month following the close of a taxable year, an income tax return under this part shall be made and filed by or for:

A. Every resident individual required to file a federal income tax return for the taxable year, or having Maine adjusted gross income for the taxable year, determined under this part in excess of the sum of his Maine personal exemptions;

B. Every resident estate or trust required to file a federal income tax return for the taxable year, or having any Maine taxable income for the taxable year, determined under this part, in excess of its Maine exemption;

C. Every nonresident individual having Maine adjusted gross income for the taxable year, determined under this part, in excess of the sum of his Maine personal exemptions; and

D. Every nonresident estate or trust having items of income or gain derived from Maine sources, determined in accordance with this part as in the case of a nonresident individual, in excess of its Maine exemption.

2. Husband and wife.

A. If the federal income tax liability of husband or wife is determined on a separate federal return, their Maine income tax liabilities and returns shall be separate.

B. If the federal income tax liabilities of husband and wife, other than a husband and wife described in paragraph C, are determined on a joint federal return, or if neither files a federal return:

(1) They shall file a joint Maine income tax return, and their tax liabilities shall be joint and several, or

(2) They may elect to file separate Maine income tax returns on a single form if they comply with the requirements of the Assessor in setting forth information, in which event their tax liabilities shall be separate except as provided in paragraph D.

C. If either husband or wife is a resident and the other is a nonresident, they shall file separate Maine income tax returns on such single or separate forms as may be required by the Assessor in which event their tax liabilities shall be separate except as provided in paragraph D, unless both elect to determine their joint Maine taxable income as if both were residents in which event their tax liabilities shall be joint and several.

D. If husband and wife file separate Maine income tax returns on a single form pursuant to paragraph B or C, and:

(1) If the sum of the payments by either spouse, including withheld and estimated taxes, exceeds the amount of the tax for which such spouse is

separately liable, the excess may be applied by the Assessor to the credit of the other spouse if the sum of the payments by such other spouse, including withheld and estimated taxes, is less than the amount of the tax for which such other spouse is separately liable;

(2) If the sum of the payments made by both spouses with respect to the taxes for which they are separately liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses;

Provided that paragraph D shall not apply if the return of either spouse includes a demand that any overpayment made by him or her shall be applied only on account of his or her separate liability.

3. Returns of deceased individuals. The return for any deceased individual shall be made and filed by his executor, administrator or other person charged with his property. If a final return of a decedent is for a fractional part of a year, the due date of such return shall be the 15th day of the 4th month following the close of the 12-month period which began with the first day of such fractional part of the year.

4. Estate and trusts. The return for an estate or trust shall be made and filed by the fiduciary. If 2 or more fiduciaries are acting jointly, the return may be made by any one of them.

5. Partnerships. On or before the 15th day of the 4th month following the close of a taxable year, every partnership shall file a return, stating specifically the items of its gross income, capital gains, capital losses and the deductions allowed by this part and shall include in the return the names and addresses of the individual who would be entitled to share in the net income and net capital gain if distributed and the amount of the distributive share of each individual. The return shall be executed by any one of the partners.

§ 5132. Returns and liabilities

1. General. Taxpayers on a calendar year basis shall file their returns on or before April 15th of each year, for the preceding calendar year. Other taxpayers shall file their returns for each fiscal year on or before the 15th day of the 4th month following the end of the fiscal year. Each return shall carry a certificate signed by taxpayer to the effect that all statements contained therein are true, under the same penalties as for perjury committed within this State. Blank forms of return shall be furnished on application, but failure to secure the form shall not relieve any taxpayer of the obligation of making any return required. Subject to regulations under this part and in such form as may be indicated thereby, taxpayers whose Maine taxable income under this part is or may be subject to tax under a similar law of another jurisdiction may be permitted to file a simple, short form return attached to a copy of his return as filed or about to be filed by him in such other jurisdiction.

2. Extensions of time. Subject to regulations under this part, reasonable extensions of time for good cause shown may be granted for not more than 6 months unless exceptional circumstances justify a longer period, within which returns may be filed. In addition, persons in active service with the Armed

Forces of the United States, who may be prevented by distance or by injury or hospitalization arising out of such service, may be allowed such extension of time for the filing of returns, without interest or penalty, as may be fixed by regulations under this part.

3. Payment.

A. Any taxpayer required to make and file a return shall pay said tax to the Assessor.

B. Said Assessor shall prescribe by regulations the place for filing, and all other necessary rules relating to the formalities of filing, payment and the form of said returns.

4. Assessment of additional tax. When the Assessor discovers from the examination of the return or otherwise that the income of any taxpayer, or any portion thereof, has not been assessed, he may, at any time within 3 years after the time when the return was due, assess the same and give notice to the taxpayer of such assessment and such taxpayer shall thereupon have an opportunity, within 30 days, to confer with the Assessor as to the proposed assessment. The limitation of 3 years to the assessment of such tax or additional tax shall not apply to the assessment of additional taxes when the return or returns filed were fraudulent or when, with intent to defraud the State, no return was filed. After the expiration of 30 days from such notification, the Assessor shall assess the income of such taxpayer or any portion thereof which he finds has not theretofore been assessed and shall give notice to the taxpayer so assessed, of the amount of the tax and interest and penalties, if any, and the amount thereof shall be due and payable within 10 days from the date of such notice. The provisions of this part with respect to appeal shall apply to a tax so assessed. No additional tax amounting to less than \$1 shall be assessed.

5. Revision of assessment. A taxpayer may apply to the Assessor for revision of the tax assessed against him at any time within 3 years from the time of the filing of the return. The Assessor shall grant a hearing thereon and if he shall determine that the tax is excessive or incorrect, he shall recompute the same according to the law and the facts. The Assessor shall notify the taxpayer of his determination and the State shall refund to the taxpayer the amount, if any, paid in excess of the tax found by him to be due in the manner provided in subsection 4. When a taxpayer has failed, without good cause, to file a return within the time prescribed by law, or has filed a fraudulent return or, having previously filed an incorrect return, has failed after notice to file a proper return, the Assessor shall add to the tax 50% of the amount for which such taxpayer is found to be properly assessed.

6. Warrant. When a tax imposed by this part, or a portion of such tax, is not paid within 60 days after the same becomes due, the Assessor shall issue a warrant under his hand and seal directed to the sheriff of any county of the State, commanding him to levy upon and sell the real and personal property of the taxpayer in the manner prescribed for the levy and sale of property upon execution, for the payment of the amount thereof with the added penalties, interest and the cost of executing the warrant and to return such warrant to the Assessor and pay to him the money collected by virtue thereof by a time to be

therein specified, not less than 60 days from the date of the warrant. Such taxpayer shall have the same right to redeem such property as in the case of property sold upon execution.

7. Tax a debt; proceedings to recover; preference. The taxes, interest and penalties imposed by this part, from the time the same shall be due, shall be a personal debt of the taxpayer to the State of Maine recoverable in any court of competent jurisdiction in a civil action in the name of the State of Maine, and shall have preference in any distribution of the assets of the taxpayer, whether in bankruptcy, insolvency or otherwise. The proceeds of any judgment obtained hereunder shall be paid to the Assessor.

8. Fiduciary's account.

A. A final account of a fiduciary shall not be allowed by the probate court unless such account shows and the judge thereof finds, that all taxes imposed by this part upon such fiduciary, which have become payable, have been paid and that all taxes which may become due are secured by bond, deposit or otherwise. The certificate of the Assessor and the receipt for the amount of the tax therein certified shall be conclusive as to the payment of the tax, to the extent of such certificate.

B. On behalf of the State, for the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the Assessor may agree upon the amount of taxes at any time due or to become due from such fiduciaries under this part and payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates.

CHAPTER 811

DECLARATION AND PAYMENT OF ESTIMATED TAX

§ 5141. Declaration and payment of estimated tax

1. Declaration. Every resident and nonresident individual shall on or before April 15th of each year make a declaration of his estimated tax for the taxable year, containing such information as the Assessor may prescribe by regulations or instructions, if his Maine payable income, other than from wages on which tax is withheld under this part, can reasonably be expected to exceed \$500.

2. Payment. Each taxpayer shall include with such declaration payment of not less than $\frac{1}{4}$ of said estimated tax. Thereafter, on the 15th days of June and September the taxpayer shall pay not less than $\frac{1}{4}$ of the tax due upon said income or his revised estimate thereof. Annually on or before January 31st following the calendar year for which his estimate of income was made, the taxpayer, having taxable income in excess of his estimated taxable income, shall reconcile his estimates and if his income tax is in excess of the tax on his estimated taxable income by 20% or more he shall forthwith revise this estimate and pay a sufficient additional amount so that the sum of his payments will equal or exceed 80% of his total tax liability. Taxpayers operating on a fiscal year basis shall make similar estimates and tax payments with respect to taxes not subject to Maine withholding tax as of the 15th day of the 4th month after the beginning

of each fiscal year and periodically thereafter so as to conform to the payments and returns required in the case of taxpayers on a calendar year. Revisions of estimates may be made and tax payments shall be made for each fiscal quarter thereafter. Filing of estimates shall not be applicable to farmers or fishermen and persons not required to file estimates shall file their returns and pay the tax on or before the 15th day of the 4th month following the calendar or fiscal year for which the tax is due.

§ 5142. Change of status

If a taxpayer during the taxable year changes his status from that of a resident to that of nonresident, or from that of nonresident to that of resident, he shall file 2 returns, one as a resident covering the fraction of the year during which he was a resident, and one as a person other than a resident covering the fraction of the year during which he was a nonresident. There shall be included in the return for the period prior to the change of residence amounts accrued up to the date of such change, if not otherwise properly includible in respect of such period or prior period, provided that the taxpayer may at his option exclude such amounts in computing taxable income for such period if he files a bond in such amount and with such sureties as it may be required by regulation, conditioned upon the return as income of such amounts, in the same manner as such amounts would be returnable as income by the taxpayer if he had not changed his residence. The exemptions provided in this part shall be divided ratably between the 2 returns so filed, according to time and according to other rules as may be prescribed by the Assessor.

§ 5143. Withholding

1. General. Beginning on the effective date of this Act, every employer in the State of a taxpayer subject to tax in respect of wages derived from sources within this State shall deduct and withhold upon the same for each payroll period an amount computed in such manner as to result, as far as practicable, with due regard to the personal exemptions and standard deduction allowable under this part, in withholding during each calendar year a sum substantially equivalent to the amount of tax reasonably estimated to be due under this part. Methods for determining the amount to be withheld shall be prescribed by regulation, as shall procedures and requirements for the furnishing of written exemption certificates to the employer, the amending or substitution of the same, the furnishing by the employer of written statements showing the total compensation, the amount withheld and other specified information.

2. Employer's return and payment of withheld taxes. Every employer required to deduct and withhold any tax under this part shall for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file a withholding return as prescribed by the Assessor and pay over to the Assessor the taxes so required to be deducted and withheld, but the Assessor may, by regulation, provide that every such employer shall on or before the 15th day of each month pay over to the Assessor, or a depository designated by the Assessor, the taxes so required to be deducted, and withheld if such taxes aggregate \$100 or more for the preceding calendar month. Where the aggregate amount so deducted and withheld by any employer is less than \$25 in a calendar quarter and the aggregate for the calendar year can reasonably be

expected to be less than \$100, the Assessor may by regulation permit an employer to file an annual return.

3. Liability.

A. All amounts actually deducted and withheld as required by this part shall be held as a special fund in trust for payment to the Assessor. Every person required to deduct and withhold any tax under this part is hereby made liable for such tax as though jointly and severally liable with the taxpayer in all respects including the assessment and collection of interest and penalties.

B. No person whose wages are made subject to deduction and withholding shall have any right of action against the person required to withhold and actually paid over to or for the use of the Assessor for the purposes of complying with this part.

CHAPTER 813

ADMINISTRATION, APPEAL, PENALTIES

§ 5151. Administration

1. Purpose and interpretation. It is declared that the purpose of this part, in addition to the essential purpose of raising revenue, is to conform as closely as may be to the Internal Revenue Code of the United States in order that the filing of returns may be simplified, the taxpayer's accounting burdens may be reduced, federal judicial and administrative precedents may be utilized and the administration and enforcement of this part may be facilitated.

2. Regulations. The Assessor shall administer this part, adopt regulations necessary or desirable to effectuate its purposes or to make explicit the treatment of various items, authorize appropriate systems of accounting and computation, provide for the allocation of income, itemized deductions, gains and losses in cases where the source or connection thereof may be partly within and partly without the State of the taxpayer, and prepare instructions for the guidance and information of taxpayers. Wherever possible, consistent with reasonable application of this part, the Assessor shall so prepare his regulations, forms, instructions and other acts to reduce the burden of making computations and returns under this part differently from similar computations and returns required of the same taxpayer with respect to the same income and gain to some other jurisdiction. The Assessor shall make procedural regulations for his review and correction of returns of taxpayers, the assessment of penalties and interest and collection thereof, the making of refunds or additional assessments of tax on such review or correction, and the assessment of the tax where no return is filed, as well as the method and time of giving due notice thereof and providing suitable methods for appropriate protest or hearing.

3. Disputed tax. Where the amount of any tax under this part or the obligation of any taxpayer may be in dispute, the Assessor may enter into an agreement to settle, adjust or compromise the same, provided that the terms of such agreement shall be first approved by the Attorney General, who shall find that the outcome of the dispute is uncertain and that the best interest of the State will be best served by said agreement.

§ 5152. Power to examine records and hearings

The Assessor, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the taxable income of any taxpayer, may examine or cause to be examined by any agent or representative designated by him for that purpose, any books, papers, records or memoranda of the taxpayer or of any person or corporation in the State bearing upon the matters required to be included in the return. The Assessor or his authorized representative may require the attendance of the taxpayer or of any other person having knowledge in the premises, at any place in the county where such person resides, and may take testimony and require proof material for his information, with the power to administer oath to such person. The fees of witnesses required to attend any such hearing shall be the same as those allowed to witnesses appearing in the Superior Court but no fee shall be payable to a witness charged with tax liability.

Any Justice of the Superior Court upon application of the Assessor may compel the attendance of witnesses and the giving of testimony before the Assessor, or his duly designated agent or representative, in the same manner, to the same extent, and subject to the same penalties as if before said court.

§ 5153. Confidential character of the Assessor's records

The records and files of the Assessor respecting the administration of this part shall be confidential and privileged, and neither the Assessor nor any employee engaged in the administration of this part or charged with the custody of any such records or files shall divulge or disclose any information obtained from said records or files or from any examination or inspection of the premises or property of any person. Neither the Assessor nor any employee engaged in the administration of this part or charged with the custody of any such records or files shall be required to produce any of them for the inspection of any person or for use in any action or proceedings except in behalf of the Assessor, in an action or proceeding under this part to which the Assessor is a party, or in behalf of any party to any action or proceeding under this part, when the records or files or the facts shown thereby are directly involved in any such action or proceedings.

Nothing herein contained shall be construed to prevent:

1. Copy to taxpayer. The delivery to a taxpayer or his duly authorized representative of a copy of any report or any other paper filed by him pursuant to this part.
2. Statistics. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof.
3. Governmental officers. The disclosure of information to duly authorized officers of the United States and of other states, districts and territories of the United States, and of the provinces and Dominion of Canada. Such information may be given only on the written request of the duly authorized officer when the said officer's government permits the exchange of like information with the taxing officials of the State of Maine and when the said officer agrees that such information shall be used only for tax collection purposes.

§ 5154. Appeal

Any decision or determination of the Assessor made under this part may be reviewed by the Superior Court within and for the County of Kennebec or the Superior Court in and for the county in which such taxpayer resides, if a resident of this State, on complaint filed by the taxpayer against the Assessor. The complaint shall be brought within 30 days after receipt by the taxpayer or his agent of written notice by the Assessor of his decision or determination and shall be served on the Assessor at least 12 days before the date of hearing. Such complaint shall state fully and specifically the taxpayer's reasons for appeal and only the reasons so stated shall be considered by the court. Thereupon, appropriate proceedings shall be had and the relief, if any, to which the taxpayer may be found entitled may be granted and any taxes, interest or penalties paid, found by the court to be illegally assessed, shall be ordered refunded to the taxpayer with interest at 6% per year from the time of payment, with costs, and judgment entered accordingly.

§ 5155. Penalties for failure to file return

1. **Corrected return.** When a taxpayer, without intent to evade any tax imposed by this part shall fail to file a return of income or pay a tax, if one is due, at the time required by or under this part, but shall voluntarily file a correct return of income and pay the tax due within 60 days thereafter, there shall be added to the tax an additional amount equal to 5% thereof, but in no case less than \$1, together with an additional 1% for each month or fraction of a month from the time the tax was originally due to the date of payment.

2. **Intent to evade.** When a taxpayer, with intent to evade the payment of a tax, fails for a period of 60 days to file a return of income or to pay a tax, if one is due, the Assessor may add to the tax actually found to be due a penalty not to exceed 25% of such tax. Such increased amount shall be further increased by the addition of 1% for each month or fraction of a month from the time the tax was originally due to the date of payment.

3. **Court order.** When a taxpayer fails to file a return within 60 days of the time prescribed by this part, a Justice of the Superior Court, upon petition of the Assessor, shall issue an order requiring such person to file a return. The order of notice upon the petition shall be returnable not later than 20 days after the filing of the petition. The petition shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the case, consistent with the rights of the parties. The judgment shall include costs in favor of the prevailing party. All writs and processes issued under this section shall be issued from the clerk's office in the county where the taxpayer resides and, except as aforesaid, shall be returnable as the court shall order.

4. **Fraudulent intent.** A person who, without fraudulent intent, fails to pay a tax or to make, render, sign, or verify a return, or to supply any information within the time required by or under this part shall be punished by a fine of not more than \$100.

5. **False information.** A person who, with intent to evade any requirement of this part or any lawful requirement of the Assessor hereunder, shall fail to

pay a tax or to make, sign or verify a return or to supply any information required by or under this part or who, with like intent, shall make, render, sign or verify any false or fraudulent information shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both.

6. Certificate of Assessor. The certificate of the Assessor to the effect that a tax has not been paid, that a return has not been filed or that information has not been supplied as required by or under this part shall be prima facie evidence that such tax has not been paid, that such return has not been filed or that such information has not been supplied.

7. Refusal or neglects. When a taxpayer, who has failed to file a return or has filed an incorrect or insufficient return and has been notified by the Assessor of his delinquency, refuses or neglects within 20 days after such notice to file a proper return or files a fraudulent return, the Assessor shall determine the income of such taxpayer according to his best information and belief and may increase the amount so determined by a penalty not to exceed 50% of such amount. He may in his discretion allow further time for the filing of a return in such case. No assessment shall be made hereunder unless made within 3 years from the date on which a correct return should have been filed.

8. Changes. When a taxpayer becomes aware, through federal examination, of an increase or decrease in his taxable Maine income, he shall forthwith report such change, with pertinent figures, to the Assessor. An assessment or refund may be made by the Assessor within 3 years after the time when the return was due or within one year of the date when notification to the Assessor by the taxpayer under this subsection takes place.

§ 5156. Receipts credited to General Fund

The Assessor shall pay over all receipts collected to the Treasurer of State daily and such receipts shall be credited to the General Fund.

Sec. 2. Effective date. This Act shall apply to income received subsequent to December 31, 1967.

STATEMENT OF FACTS

It is estimated that this Act will produce \$12,000,000 in revenue to the State.