

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
104th LEGISLATURE

HOUSE AMENDMENT " F " to S. P. 449, L. D. 1483, Bill, "AN ACT Making Supplemental Appropriations for the Expenditures of State Government and for Other Purposes for the Fiscal Years Ending June 30, 1970 and June 30, 1971."

Amend said Bill by striking out all of the Emergency clause and inserting in place thereof the following:

'SECTION D

Sec. 1. R. S., T. 36, §1811, amended. The first sentence of section 1811 of Title 36 of the Revised Statutes, as repealed and replaced by section 92 of chapter 544 of the public laws of 1967<sup>or</sup> and amended by section 2 of chapter 295 of the public laws of 1969, is further amended to read as follows:

A tax is imposed at the rate of 5% 6% on the value of all tangible personal property and telephone and telegraph service sold at retail in this State, and upon the rental charged for living quarters in hotels, rooming houses, tourist or trailer camps, measured by the sale price, except as in chapters 211 to 225 provided.

Sec. 2. R. S., T. 36, §1812, amended. The first 2 paragraphs of section 1812 of Title 36 of the Revised Statutes, as last repealed and replaced by section 3 of chapter 295 of the public laws of 1969, are repealed and the following enacted in place thereof:

Every retailer shall add the sales tax imposed by chapters 211 to 225, or the average equivalent of said tax, to his sale price,

(Over)

*(Filing No. H-542)*

except as otherwise provided, and when added the tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid and shall be recoverable at law in the same manner as the purchase price. When the sale price shall involve a fraction of a dollar, the tax shall be added to the sale price upon the following schedules:

<u>Amount of Sale Price</u>	<u>Amount of Tax</u>
<u>\$0.01 to \$0.10, inclusive</u>	<u>0¢</u>
<u>.11 to .17, inclusive</u>	<u>1¢</u>
<u>.18 to .34, inclusive</u>	<u>2¢</u>
<u>.35 to .50, inclusive</u>	<u>3¢</u>
<u>.51 to .67, inclusive</u>	<u>4¢</u>
<u>.68 to .84, inclusive</u>	<u>5¢</u>
<u>.85 to .99, inclusive</u>	<u>6¢</u>

When the sale price exceeds 99¢, the tax to be added to the price shall be 6¢ for each whole dollar, plus the amount indicated above for each fractional part of a dollar.

Sec. 3. R. S., T. 36, §1861, amended. The first sentence of section 1861 of Title 36 of the Revised Statutes, as last amended by section 4 of chapter 295 of the public laws of 1969, is further amended to read as follows:

A tax is imposed on the storage, use or other consumption in this State of tangible personal property, purchased at retail sale, at the rate of 5% 6% of the sale price.

Sec. 4. Effective date. Sales and use tax liability accruing after June 30, 1969 shall be computed on the bases of the rates imposed by sections 1, 2 and 3. Retail sales and purchases made after June 30, 1969, including retail sales and purchases made pursuant to contracts entered into prior thereto and telephone and telegraph charges first billed on and after July 1, 1969, shall be subject to the taxes imposed by sections 1, 2 and 3.

#### SECTION E

R. S., T. 36, §2623, amended. The first sentence of section 2623 of Title 36 of the Revised Statutes is amended to read as follows: Every corporation, person or association operating any railroad in the State under lease or otherwise shall pay to the State Tax Assessor, for the use of the State, an annual excise tax for the privilege of exercising its franchises and the franchises of its leased roads in the State, which, with the tax provided for in section 561, is in place of all taxes upon ~~such-railroad-and-its~~ the property of such railroad.

#### SECTION F

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

#### CORPORATE INCOME TAX

#### CHAPTER 801

#### DEFINITIONS; GENERAL PROVISIONS

#### § 5101. Definitions

The following definitions shall apply throughout this part unless the context requires otherwise:

1. Assessor. "Assessor" means the State Tax Assessor.

(Over)

*(Filing No. H-542)*

2. Corporation. "Corporation" means any business entity subject to income taxation as a corporation under the laws of the United States, including a corporation having an election in effect under subchapter S of the Internal Revenue Code, but excepting corporations subject to tax under sections 2511 to 2522.

3. Fiscal year. "Fiscal year" means an accounting period of 12 months ending on the last day of any month except December, or an accounting period of more or less than 12 months, which period is employed as the fiscal year of the taxpayer for the United States income tax purposes.

4. Laws of the United States. "Laws of the United States" means, for any taxable year, the statutes of the United States relating to federal income taxes effective for the taxable year, whether enacted before or after the effective date of this part.

5. Maine net income. "Maine net income" means, for any taxable year and for any corporate taxpayer, the taxable income of the taxpayer for that taxable year under the laws of the United States, allocated or apportioned to this State under section 5203, excluding:

A. Income which under laws of the United States is exempt from taxation by states;

B. A deduction for tax imposed by this part or the equivalent taxing statute of another state;

C. A deduction for dividends received from or paid to domestic or foreign corporations unless such corporations are affiliated, under Internal Revenue Code, section 1504a, and the paying corporation is subject to taxation under this part with an allocation or apportionment to this State under section 5203 of at least 50% of taxable income under the laws of the United States for that taxable year in which the dividend is paid.

In the case of affiliated corporations under Internal Revenue Code, Section 1504 (a), which file their federal returns on a consolidated basis as a group, the corporate taxpayer shall be deemed to be all the affiliated corporations as a group, if the group so elects, in which case taxable income shall be deemed to be consolidated taxable income of the group.

6. Tax or tax liability. "Tax" or "tax liability" is the liability for all amounts owing by a taxpayer to the State of Maine under this part.

7. Taxable corporation. "Taxable corporation" means, for any taxable year, a corporation which, at any time during that taxable year received any income allocable or apportionable to this State under section 5203. In the case of affiliated corporations under Internal Revenue Code, Section 1504(a) which file their federal returns on a consolidated basis as a group and which have made the election provided for in subsection 5 the group shall be deemed to be the taxable corporation.

8. Taxable year. "Taxable year" means the taxpayer's fiscal year, with respect to which a tax is imposed under this part, and, in the case of a return

filed with respect to a fractional part of a year, the period with respect to which the return is filed.

9. Taxpayer. "Taxpayer" means a corporation obligated to file a return with or pay or remit any amount to this State under this part.

#### § 5102. Administration

The assessor shall administer and enforce this part and pay over all receipts collected to the Treasurer of State promptly and such receipts shall be credited to the General Fund.

#### § 5103. Regulations

The assessor may adopt, prescribe and from time to time alter and amend and enforce reasonable rules, orders and regulations for the purpose of implementing this part.

#### § 5104. Abatement of tax liabilities

The assessor is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitations properly applicable thereto, or is erroneously or illegally assessed.

#### § 5105. Secrecy of records

1. Disclosure of information prohibited. Except in accordance with a judicial order, or as otherwise provided by law, the assessor, his deputy, agent, designated officer or employee, and any person who at any time served or acted as assessor, his deputy, agent, designated officer or employee, shall not divulge or make known in any manner the amount of income or any other particulars with respect to a taxpayer's income set forth or disclosed in any report, information or return required or obtained under this part. Nothing herein shall be construed to prohibit:

A. The publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or of particular taxpayers.

B. The inspection by the Attorney General or his duly authorized representative of such report, information or return of or concerning a taxpayer who shall bring action to set aside or review the tax liability with which such report, information or return is concerned, or against whom an action or proceeding has been or is intended to be instituted to recover such tax liability.

C. The review by any person of any report, information or return solely in connection with the processing of such report, information or return, or in connection with the audit of the books, records and accounts of the Bureau of Taxation, who shall, for the purposes of this section, be deemed to be an employee of the assessor with respect to such processing or audit. Reports, information and returns shall be preserved for 6 years and thereafter until the assessor orders them to be destroyed.

2. Penalty. A person who violates subsection 1 shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if the offender is an officer or employee of this State, he shall in addition be dismissed from office and be incapable of holding any public office for a period of 5 years thereafter.

3. Information to governmental officers. Notwithstanding this section, the assessor may permit the Commissioner of Internal Revenue of the United States, or the proper officer of any other state imposing an income tax upon the income of corporations subject to taxation under this part, or the authorized representative of such person, to inspect the reports, information and returns of or respecting any corporation, or the assessor may furnish to any of those persons or his authorized representative an abstract thereof. That permission shall be granted to the Commissioner of Internal Revenue or to an officer of another state, however, only if the statutes of the United States or of the other state, as the case may be, grant substantially similar privileges to the proper officer of this State charged with the administration of this part, and, further, only if the Commissioner of Internal Revenue or the officer of another state is subject to statutes of the United States or of the other state, as the case may be, which provide for the secrecy of records in terms substantially similar to those provided for under this section.

#### § 5106. Publication of statistics

The assessor may from time to time prepare and publish statistics reasonably available with respect to the operation of this part including amounts collected, classification of taxpayers, tax liabilities and such other facts as he considers pertinent.

#### § 5107. Allocation of overpayments

Any overpayment received by the assessor from any taxpayer with respect to a tax liability of the taxpayer may be credited to any outstanding liability under this Title owned by the taxpayer making the overpayment. In such case, the payment shall be applied, first, to the amount of any interest; next to the amount of any penalty; next to the amount of any fee; next to the amount of any unpaid tax.

#### § 5108. Reciprocal enforcement of tax liabilities

1. Collection by Attorney General. At the request of the assessor, the Attorney General may bring suit in the name of this State, in the appropriate court of any other state to collect any tax legally due this State.

2. Reciprocity. The courts of this State shall recognize and enforce liabilities for taxes lawfully imposed by any other state which extends a like comity to this State, and the duly authorized officer of that state may sue for the collection of such a tax in the courts of this State. A certificate by the Secretary of State of the other state that an officer suing for the collection of such a tax is duly authorized to collect it shall be conclusive proof of this authority.

3. Definitions. For the purposes of this section, the words "tax" and "taxes" include interest, fees and penalties due under any taxing statute, and

*(Filing No. H-542)*

liability for the interest, fees and penalties due under a taxing statute of another state shall be recognized and enforced by the courts of this State to the same extent that the laws of the other state permit the enforcement in its courts of liability for the interest, fees and penalties due under a taxing statute of this State.

§ 5109. Inconsistent provisions

Notwithstanding any provision of the statutes of this State to the contrary, no corporation, and no item of income, shall be exempt from taxation under this part unless the corporation, or item of income, as the case may be, is expressly exempted from taxation by this part.

§ 5110. Purpose

1. Conformity with United States Internal Revenue Code. This part is intended to conform the Maine Corporate Income Tax Law with the United States Internal Revenue Code, except as otherwise expressly provided, in order to simplify the taxpayer's filing of returns, reduce the taxpayer's accounting burdens, and facilitate the collection and administration of these taxes.

CHAPTER 803  
DETERMINATION OF TAX

§ 5201. Name of tax

The tax imposed by this chapter shall be known as the "Maine Corporate Income Tax."

§ 5202. Tax on income of corporations

A tax is imposed upon the income earned or received for each taxable year by every taxable corporation, in addition to all other taxes, as follows:

2% of the Maine net income of the corporation.

§ 5203. Allocation and apportionment of income

1. As used in this section, unless the context otherwise requires:

A. "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 constitutes integral parts of the taxpayer's regular trade or business operations.

B. "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

C. "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

D. "Nonbusiness income" means all income other than business income.

E. "Sales" means all gross receipts of the taxpayer not allocated under subsections 4 to 8.

(Over)

*(Filing No. H-542)*



F. "State" means any state of the United States, District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

2. Any taxpayer having income from business activity which is taxable both within and without this State shall allocate and apportion his net income as provided in this section. Any taxpayer having income solely from business activity taxable within this State shall allocate or apportion his entire net income to this State.

3. For purposes of allocation and apportionment of income under this section, 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.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsection 5 to 8.

←5.

A. Net rents and royalties from real property located in this State are allocable to this State.

B. Net rents and royalties from tangible personal property are allocable to this State:

(1) If and to the extent that the property is utilized in this State, or

(2) 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.

C. 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.

←6.

A. Capital gains and losses from sales of real property located in this State are allocable to this State.

B. Capital gains and losses from sales of tangible personal property are allocable to this State if:

(1) The property had a situs in this State at the time of the sale, or

(2) 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.

C. 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.

7. Interest and dividends are allocable to this State if the taxpayer's commercial domicile is in this State.

8.

A. Patent and copyright royalties are allocable to this State:

(1) If and to the extent that the patent or copyright is utilized by the payer in this State, or

(2) 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.

B. 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.

C. 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.

9. All business income 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 3.

10. 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.

11. 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 rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. 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.

(Over) *(Filing No. H-542)*

13. 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.

14. Compensation is paid in this State if:

- A. The individual's service is performed entirely within the State; or
- B. 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
- C. 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.

15. 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.

16. Sales of tangible personal property are in this State if:

- A. 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 conditions of the sale; or
- B. 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.

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

- A. The income-producing activity is performed in this State; or
- B. 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.

18. If the allocation and apportionment provisions of this section 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. Separate accounting;
- B. The exclusion of any one or more of the factors;
- C. The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or
- D. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

§ 5204. Franchise tax on banking corporations and loan associations

A tax is imposed for each calendar year or fiscal year ending during that calendar year upon the franchise or privilege of doing business in this State of every corporation which is a bank, savings bank, savings institution, trust company, and every savings and loan association, or loan and building association, that has a business location in this State. The tax is 2% of the taxable income of the corporation or association for that taxable year under the laws of the United States, reduced by the amount of the tax payable by the corporation or association for the taxable year under section 5202.

For purposes of chapters 805, 807, 809 and 811, the tax imposed under this section shall be a part of the tax imposed under section 5202.

§ 5205. Alternative tax computation

Any corporation required to file a return under this part may elect to waive the provisions of sections 5202 and 5203, and to pay tax at the rate of 1% of gross sales within this State, provided that

- A. The corporation did not own or rent any real estate or tangible personal property in this State during the taxable year; and
- B. The only activity of the corporation in this State during the taxable year consisted of sales; and
- C. The gross sales of the corporation within this State during the taxable year did not exceed \$100,000.

CHAPTER 805

RETURNS

§ 5301. Returns by corporations

Every corporation which is a taxable corporation, for any taxable year, shall file a Maine corporate income tax return for that taxable year on or before the date a United State income tax return is required to be filed for that year by that corporation under the laws of the United States.

§ 5302. Additional returns

When the assessor is of the opinion that a taxpayer has failed to file any return required by this part, or to include in any return so filed, either intentionally or through error, information by which the taxpayer's tax liability may correctly be determined, the assessor may, by written notice to the taxpayer, require that the taxpayer file that return, or an additional supplementary return containing such information, verified as provided in section 5306, in such form as the assessor shall prescribe. The filing of that return shall not relieve the taxpayer from any of the penalties to which he may be liable under this part.

§ 5303. Failure to file a return

1. Court order: Upon the failure of a taxpayer to file any return required under this part within 15 days of the date of a notice to the taxpayer

under section 5303, the assessor may apply to a Justice of the Superior Court of Kennebec County, and upon the complaint of the assessor the justice shall issue an order requiring any principal officer of the corporate taxpayer to file a proper return in accordance with this part, upon pain of contempt. The court shall forthwith fix a time and place for hearing and cause 60 days' notice thereof to be given the taxpayer, having regard to the speediest possible determination of the case consistent with the rights of the parties.

2. Deficiency assessment. Upon the failure of a taxpayer to file any return required under this part within 15 days of the date of a notice to the taxpayer under section 5302, whether or not a complaint has been or will be filed under subsection 1, the assessor may compute the tax liability of the taxpayer with respect to which the return was required to be filed, according to the assessor's best information and belief. Upon that computation, the assessor shall notify the taxpayer of his deficiency with respect to the payment of that tax liability, and may assess any penalty or interest with respect thereto, under section 5501.

#### § 5304. Examination of records and witnesses

The assessor, for the purpose of ascertaining the correctness of any return or for the purpose of making a determination of the tax liability of any taxpayer, may examine or cause to be examined by any agent or representative designated by him for that purpose, any books, paper, records or memoranda of the taxpayer bearing upon the matters required to be included in any return. The assessor or such officers as he may designate may require the attendance of the taxpayer or of any other person having knowledge in the premises, at any place in the county where the taxpayer or person resides or has a place of business, or in Kennebec County if the taxpayer is a corporation not having a place of business in this State, and may take testimony and require proof material for his information, and may administer oaths or take acknowledgement in respect of any return or other information required by this part or the rules, regulations and decisions of the assessor.

#### § 5305. Supplemental information; changes in federal tax liability or taxable income.

1. Notification by taxpayer. If, after the time for filing any return required by this chapter, the taxpayer

A. Becomes aware of any information which makes that return false, inaccurate or incomplete;

B. Is notified of any final determination by the United States that his taxable income under the laws of the United States is other than the amount stated in the return;

C. Files an amended return under the laws of the United States; the taxpayer shall, within 90 days of receipt of that information or notification of that determination or filing that amended return or as otherwise required by the assessor, notify the assessor thereof, and of such particulars as may be relevant to the amount of any tax liability of the taxpayer under this part.

(Filing No. H-542)

2. Penalties. Any notice required to be given to the assessor under this section shall be considered to be a return for purposes of this part, and a taxpayer required to file any such return shall be subject, with respect thereto, to the provisions of this part including, without limitation, the provisions governing penalties for failure to file a return, except as those provisions conflict with the express provisions of this section.

§ 5306. Form and verification of returns

The returns required to be filed under this part shall be in such form and manner as the assessor prescribes in order to assure payment of the taxes imposed by this part and shall be filed at the main office of the Bureau of Taxation. Those returns shall be verified by written declarations that the statements therein are made subject to the pains and penalties of perjury. When a return is made by a corporation, the person signing it shall be considered to be the person who is subject to the pains and penalties of perjury. The assessor shall cause to be prepared blank forms for the returns and shall cause them to be distributed throughout the State and to be furnished upon application, but failure to secure or receive such a form shall not relieve a taxpayer from the obligation of filing any return herein required.

§ 5307. Extension of time for filing of returns

The assessor may extend the time within which a taxpayer is required to file a return. If the extension results in extension of the time for the payment of the tax liability with respect to which the return is filed, the taxpayer shall pay, at the date that tax liability is paid, without assessment or demand, an amount of interest computed at the rate of  $\frac{1}{2}\%$  per month on that tax liability from the time when the tax liability was originally required to be paid to the time of payment.

§ 5308. Failure to file tax returns

In case of failure to file any return required under this part on the date prescribed therefor, determined with regard to any extension of time for filing, there shall be added to the amount required to be shown as tax on such return 5% of the amount of such tax if the failure is not for more than one month, with an additional 5% for each additional month or fraction thereof during which such failure continues, not exceeding 25% in the aggregate. For purposes of this section, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

CHAPTER 807

PAYMENT OF INCOME TAXES

§ 5401. Payment by corporations

The income tax liability imposed by this part shall be discharged in 2 equal installments, the first installment to be discharged on or before the date on which the return of the corporation for the taxable year is required to be filed, and the 2nd installment shall be discharged not later than 3 months

after the date on which the return of the corporation for the taxable year is required to be filed.

§ 5402. Method of payment

All tax liabilities imposed by this part may be paid with uncertified check, unless the assessor otherwise prescribes, but if a check so received is not honored by the bank on which it is drawn, the taxpayer shall remain liable for the payment of the tax and for all lawful penalties and interest, in the same manner as if the check had not been tendered.

§ 5403. Failure to pay tax

1. Deficiency due to negligence. If any part of a deficiency is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, there shall be added to the tax an amount equal to 5% of the deficiency.

2. Fraud. If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to 50% of the deficiency. This amount shall be in lieu of any amount determined under subsection 1.

3. Determination of deficiency. For purposes of subsections 1 and 2 related to deficiencies due to negligence or fraud, the amount shown as the tax by the taxpayer upon his return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

CHAPTER 809

DEFICIENCIES, ASSESSMENTS, REFUNDS AND APPEALS

§ 5501. Notice of deficiencies; assessment of penalties and interest

If the assessor finds that any taxpayer has failed to discharge in full the amount of any tax liability incurred under this part, or that a penalty or interest should be assessed under it, the assessor shall notify the taxpayer of the deficiency or assess the penalty or interest, as the case may be, by registered mail, unless the assessment concerns solely the assessment of interest.

§ 5502. Time limitations on notices of deficiency and assessments of penalties and interest

1. General limitation. The assessor may notify a taxpayer of a deficiency with respect to the payment of any tax liability, or assess a penalty or interest with respect thereto, in accordance with section 5501, at any time within 3 years after the date that tax liability was originally required to be paid under this part.

2. Exceptions. Notwithstanding subsection 1:

A. If the taxpayer fails to file a proper return with respect to any tax liability at the time prescribed for its filing, the notification or assessment may be made at any time before the end of 3 years after the taxpayer files such a return;

(Cont'd) (Filing No. H-542)

B. If the deficiency is caused by reason of fraud or the willful intent of the taxpayer to defeat or evade this part, the notification or assessment may be made at any time;

C. If the notice of deficiency or assessment is founded upon an assertion or determination by the United States that the taxable income, or income tax liability, of the taxpayer under the laws of the United States is greater than the amount of the taxable income or income tax liability reported on any return of the taxpayer filed under the laws of the United States, the notification or assessment under section 5501 may be made within the time prescribed under subsection 1, or at any time before the expiration of 6 months after the date the assessor is notified, in writing, by the taxpayer or by the United States of the federal assertion or determination, whichever period is the later to expire;

D. If the taxpayer and the assessor agree, the notification or assessment may be made at any time before the date so agreed upon.

#### § 5503. Determination of deficiency, penalty or interest

Upon receipt of a notice of deficiency or assessment of penalty or interest under section 5501, the taxpayer may, within 30 days after the date of the notice or assessment, petition the assessor in writing for a determination of that deficiency or assessment. The assessor shall thereafter grant a hearing upon the matter and notify the taxpayer in writing of his determination concerning the deficiency, penalty or interest.

#### § 5504. Refunds; petitions for refunds

1. Petition; notification. At any time within 3 years after the date a return is required to be filed under this part, or 6 months after a refund was received from the United States with respect to an income tax liability, whichever is later, a taxpayer may petition the assessor for the refund of all or any part of the amount of tax paid with respect to the return. The assessor may grant a hearing with respect to such petition. The failure of the assessor to notify the taxpayer of his determination of the claim within 6 months, unless the period is extended by agreement of the assessor and the taxpayer, shall be considered to be a notification to the taxpayer of the assessor's denial of the claim. The notification shall be considered to have been given on the date of the expiration of the 6-month period, or the extension thereof.

2. Refund. If the assessor determines, on a petition for refund or otherwise, that a taxpayer has paid an amount of tax under this part which, as of the date of the determination, exceeds the amount of tax liability owing from the taxpayer to the State, with respect to the current and all preceding taxable years, under any provision of this part, the assessor shall forthwith refund the excess amount to the taxpayer together with interest at the rate of  $\frac{1}{2}\%$  per month. That interest shall be computed from the date of the excess payment, or from the date the return was due with respect to which the excess payment was made, whichever is the later date.

#### § 5505. Procedure for hearings by assessor; appeals



1. Procedure. Any hearing granted by the assessor under section 5503 or 5504 shall be subject to, and governed by, such reasonable conditions, procedures and rules of evidence as the assessor shall prescribe.

2. Appeal. A taxpayer may appeal a determination by the assessor concerning a notice of deficiency, an assessment of penalty or interest, or a claim to refund, to the Superior Court of the county in which the taxpayer has a place of business, or if he does not have a regular place of business in the State, to the Superior Court of Kennebec County. The appellant shall, when such appeal is taken, file an affidavit stating his reasons of appeal and serve a copy thereof on the assessor, and in the hearing of the appeal shall be confined to the reasons of appeal set forth in such affidavit. Jurisdiction is granted to the Superior Court to hear and determine such appeals and to enter such orders and decrees as the nature of the case may require. The decision on all questions of fact shall be final. An appeal may be taken to the law court as in other actions. Decisions shall be certified forthwith by the clerk of courts to the assessor.

§ 5506. Payment and collection of deficiencies and assessments;  
jeopardy notices

1. When collectible; stay of collection. Upon notification to a taxpayer of any deficiency, and upon assessment against the taxpayer of any penalty or interest, under section 5501, the amount of the assessment shall be payable forthwith and the amount of the deficiency and assessment shall be collectible by the assessor 30 days after the date of the notification or assessment. The collection by the assessor of the deficiency, penalty or interest shall be stayed:

A. If the taxpayer files a petition for determination by the assessor in accordance with section 5503, collection shall be stayed until 30 days after the notification of the taxpayer of the determination;

B. If within 30 days of the notification of determination the taxpayer files a notice of appeal under section 5505, subsection 2, collection shall be stayed pending judgment of the court upon the appeal;

C. Under such further circumstances and upon such terms as the assessor prescribes.

2. Jeopardy collection. Notwithstanding subsection 1, the assessor, if he believes the collection from a taxpayer of any deficiency, penalty or interest to be in jeopardy, may demand, in writing, that the taxpayer pay the deficiency, penalty or interest forthwith. The demand may be concurrently with, or after, the notice of deficiency or the assessment of penalty or interest given to the taxpayer under section 5501. The amount of deficiency, penalty or interest shall be collectible by the assessor on the date of the demand, unless the taxpayer files with the assessor security satisfactory to the assessor in an amount equal to the deficiency, penalty or interest sought to be collected, for such amount as finally may be determined. In the event that it is finally determined that the taxpayer was not liable for the amount of the deficiency, penalty or interest referred to in any demand under this subsection, the assessor shall reimburse the taxpayer, promptly upon such determination, for

the reasonable cost to the taxpayer of any bond obtained by him for the purpose of this section.

§ 5507. Remedy exclusive; determination final

1. **Exclusive remedies.** The exclusive remedy of a taxpayer with respect to the refund of moneys paid in connection with a return filed under this part shall be the petition for refund provided under section 5504, and the appeal from an adverse determination of the petition for refund provided under section 5505. The exclusive remedy of a taxpayer with respect to a notification of deficiency or assessment of penalty of interest under section 5501 shall be the petition for determination of the deficiency or assessment provided under section 5503, and the appeal from an adverse determination of deficiency or assessment provided under section 5505.

2. **Finality.** Upon the failure of a taxpayer to petition in accordance with section 5503 from a notice of deficiency or assessment under section 5501, or to appeal in accordance with section 5505 from a determination of a deficiency or assessment of tax liability under section 5503, the taxpayer shall be bound by the terms of the notification, assessment or determination, as the case may be. The taxpayer shall not thereafter contest, either directly or indirectly, the tax liability as therein set forth, in any proceeding including, without limitation, a proceeding upon a claim of refund of all or any part of any payment made with respect to the tax liability, or a proceeding for the enforcement or collection of all or any part of the tax liability.

§ 5508. Determination of taxable income and income tax liability under the laws of the United States

For purposes of this part, a taxpayer's taxable income under the laws of the United States shall be determined by reference to the judicial decisions and administrative ruling of the United States.

1. **Determination by the United States.** A determination by the United States which establishes the amount of a taxpayer's taxable income under the laws of the United States for any taxable year shall be binding on the taxpayer and the State in calculating the taxpayer's liability to Maine under this part. For purposes of this section, "determination by the United States" means:

A. A decision by the tax court of the United States or a judgment, decree or other order by any United States court of competent jurisdiction which has become final;

B. A closing agreement under section 7121 of the Internal Revenue Code of 1954;

C. An agreement executed under section 1313(a)(4) of the Internal Revenue Code of 1954.

2. **Prima facie evidence of federal tax liability.** For any taxable year, the payment to the United States by any taxpayer of an aggregate amount of income tax, whether by withholding or otherwise, whether under a claim of deficiency, demand or otherwise, and whether under protest or otherwise,

shall be prima facie evidence, for purposes of this part, that aggregate amount, less any refunds received by the taxpayer from the United States with respect to his income tax payments for that year, constitutes the income tax liability of the taxpayer for that taxable year under the laws of the United States, and that the items of income, deductions, exemptions and credits with respect to which the income tax liability was calculated are the items of income, deductions, exemptions and credits of the taxpayer for that taxable year under the laws of the United States.

3. Affidavit of District Director of Internal Revenue. For purposes of this section, the affidavit of any United States District Director of Internal Revenue that a taxpayer has paid a specified aggregate amount of income tax, has received a specified amount of refund with respect to his income tax payments, or has paid any amount of tax calculated with respect to specified items of income, deductions, exemptions or credits, shall be prima facie evidence of the truth of those matters set forth in the affidavit.

#### CHAPTER 811

#### ENFORCEMENT AND COLLECTION

##### § 5601. Tax a debt to the State

Any tax liability imposed by this part becomes, from the time the tax liability is due and payable, a debt of the taxpayer to the State.

##### § 5602. Action to collect taxes; limitation

Action may be brought by the Attorney General in the name of the State of Maine to recover the amount of the taxes, interest and penalties of any taxpayer, recoverable in any court of competent jurisdiction, if the action is brought within 6 years after the date the tax liability was collectible under section 5505. Claims of the State for sums under this part shall have preference in any distribution of the assets of the taxpayer, whether in bankruptcy, insolvency or otherwise. The proceeds of any judgment shall be paid to the assessor.

##### § 5603. Levy for nonpayment

When all or any portion of a tax liability imposed by this part is not paid within 60 days after it becomes collectible under section 5506, the assessor may issue his warrant to the sheriff of any county of this 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 thereunder within the time specified in the warrant. Such taxpayer shall have the same right to redeem such property as in the case of property sold upon execution.

##### § 5604. Liability for failure or delinquency

An officer or employee of any corporation who, with intent to evade any requirement of this part or any lawful requirement of the assessor hereunder, fails to pay or remit a tax liability when due or to make, sign, verify or file a

return when required to do so, or to supply any information required by or under this part or who, with like intent, makes, renders, signs, verifies or files any false or fraudulent return or information, shall be fined not more than \$1,000 or be imprisoned not more than one year, or by both.

§ 5605. Tax liability as property lien

1. Creation and effect of lien. If any corporation required to pay or remit any tax liability under this part neglects or refuses to pay it in accordance with this part after notification or assessment thereof under section 5501, the aggregate amount of the tax liability then due and owing, together with any costs that may accrue in addition thereto, shall be a lien in favor of this State upon all property and rights to property, whether real or personal, belonging to the corporation. The lien shall arise at the time the notification or assessment is made by the assessor and shall continue until the aggregate tax liability with costs satisfied in full or becomes unenforceable by reason of lapse of time. The lien shall be valid as against any subsequent mortgagee, pledgee, purchaser or judgment creditor when notice of the lien and the sum due has been filed by the assessor in the registry of deeds of the county where such property is located with respect to real property or fixtures and in the office in which a security or financing statement or notice with respect to personal property would be filed. In the case of any prior mortgage on any real or personal property so written as to secure a present debt and also future advances by the mortgagee to the mortgagor, the lien herein provided, when notice thereof has been filed in the proper office, shall be subject to the prior mortgage unless the assessor also notifies the mortgagee of the recording of the lien in writing, in which case any indebtedness thereafter created from the mortgagor to the mortgagee shall be junior to the lien herein provided for.

2. Release of lien. The assessor shall issue to the taxpayer a certificate of release of the lien if:

A. The assessor finds that the liability for the amount demanded, together with costs, has been satisfied or has become unenforceable by reason of lapse of time;

B. There is furnished to the assessor a bond with surety approved by the assessor in a sum sufficient to equal the amount demanded, together with costs, the bond to be conditioned upon payment of any judgment rendered in proceedings regularly instituted by the assessor to enforce collection thereof at law or of any amount agreed upon in writing by the assessor to constitute the full amount of the liability;

C. The assessor determines at any time that the interest of this State in the property has no value.

3. Enforcement of lien. The lien provided for by this section may be enforced at any time after the tax liability with respect to which the lien arose becomes collectible under section 5505 by a civil action brought by the Attorney General in the name of the State of Maine in the Superior Court of the county in which the property is located to subject any property, of

(Over)

(Filing No. H-542)

whatever nature, of the taxpayer, or in which he has any right, title or interest, to the payment of such tax or liability. The court shall, after the parties have been only notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the State of Maine therein is established, may direct a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court. If the property is sold to satisfy a lien held by the State of Maine, the State of Maine may bid at the sale such sum, not exceeding the amount of such lien, with expenses of sale, as the assessor directs.

Sec. 2. Computation of tax for first taxable year. All corporations subject to this Act may elect to compute their tax for the first taxable year of less than 12 months in accordance with either of the following methods:

A. The tax may be computed as if this Act had been effective on the first day of the taxpayer's annual accounting period and the amount so computed shall be multiplied by a fraction, the numerator of which is the number of months in the taxpayer's first taxable year, and the denominator of which is 12;

B. The tax may be computed by determining the taxable income in the first taxable year, in accordance with an accounting method satisfactory to the Assessor, which reflects the actual taxable income attributable to the period.

Sec. 3. Effective date. Section F of this Act shall become effective as to income on and after January 1, 1969.

Emergency clause. In view of the emergency cited in the preamble, sections A, B, C and E of this Act shall take effect July 1, 1969.'

Filed by Mr. Richardson of Cumberland.

Reproduced and distributed under the direction of the Clerk of the House.

(Filing No. H-542)

6/17/69