

# MAINE STATE LEGISLATURE

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**Amendment S-305**

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**for L.D. 1483 (104th Legis., 1969).**

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D. O. E. B.

SENATE AMENDMENT "E" 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, 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

DEFINITIONS; GENERAL PROVISIONS

§ 5101. Definitions

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

1. Adjusted gross income. "Adjusted gross income" means, for any taxable year and for any individual, estate or trust, the adjusted gross income of the individual, estate or trust for the taxable year determined under the laws of the United States.
2. Assessor. "Assessor" means the State Tax Assessor.
3. Corporation. "Corporation" means any business entity subject to income taxation as a corporation, and any entity qualified as a small business corporation, under the laws of the United States, with the exception of corporations subject to taxes under sections 2511 to 2689.
4. Federal income tax liability. "Federal income tax liability" means, for any taxpayer and for any taxable year, the federal income tax payable by the taxpayer for that taxable year under the laws of the United States after the allowance of the retirement income credit, investment credit, foreign tax credit and tax-free covenant bonds credit, but before the allowance of any other credit against that liability or the addition of any surtax upon that liability granted or imposed under the laws of the United States.

5. 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.

6. Individual. "Individual" means a natural person. However, if, for any taxable year, a husband and wife or a surviving spouse file a joint income tax return under this part they shall be considered to be a single individual for that taxable year.

7. 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.

8. 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, excluding income which under the laws of the United States is exempt from taxation by the states.

9. Nonresident estate. "Nonresident estate" means any estate other than a resident estate.

10. Nonresident individual or trust. "Nonresident individual or trust" means, for any taxable year, an individual or trust not qualifying for residency in this State during any part of that taxable year.

11. Part-year resident individual or trust. "Part-year resident individual or trust" means, for any taxable year, an individual or trust qualifying for residency in this State during only part of that taxable year.

12. Residency. For any portion of a taxable year,

**A. An individual qualifies for residency in this State if**

(1) The individual is domiciled in this State during that portion of the taxable year; provided, however, that if any individual maintains a permanent place of abode outside this State, and does not maintain one within this State during an entire taxable year, and does not spend, in the aggregate, more than 30 days of that taxable year within this State, he does not qualify for residency in this State during any portion of that taxable year; or

(2) The individual maintains a permanent place of abode within this State, and is present within this State, during that portion of the taxable year, if he both maintains that place of abode and is present in this State for more than an aggregate of 183 days of that taxable year.

**B. A trust qualifies for residency in this State if the trust was created by, or consists of property of, an individual who was domiciled in this State during that portion of the taxable year or at his death.**

13. Resident estate. "Resident estate" means the estate of a decedent who, at his death, was domiciled in this State.

14. Resident individual or trust. "Resident individual or trust" means, for any taxable year, an individual or trust qualifying for residency in this State during the entirety of that taxable year.

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

16. 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 5303.

17. Taxable year. "Taxable year" means the calendar year, or the fiscal year ending during the calendar 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.

18. Taxpayer. "Taxpayer" means an individual, trust, estate, employer or 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 may upon making a record of his reasons therefor, waive, reduce or compromise any of the taxes, penalties or interest or other amounts provided in this part.

§ 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 may be preserved for 3 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 individuals, trusts, estates or 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 individual or 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 payments

Any payment received by the assessor from any taxpayer with respect to a tax liability of the taxpayer may be applied to the tax liability in the following order or priority, notwithstanding any direction by the taxpayer to the contrary:

First, against any portion of that tax liability initially incurred with respect to a preceding taxable year, with the portion incurred with respect to the earliest preceding taxable year to be satisfied before any portion incurred with respect to any succeeding taxable year; next, against any portion of that tax liability incurred with respect to the current taxable year. As to each portion, 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; incurred with respect to the taxable year.

§ 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 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 individual, corporation or other taxpayer, and no item of income, shall be

exempt from taxation under this part unless the individual, corporation, other taxpayer 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 personal and corporate income taxes 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.

2. Basis of tax. It is intended that, for any taxable year, individuals, estates and trusts shall be taxed upon only their Maine income for that year, but that the rate at which the Maine income of any taxpayer is taxed under this part shall reflect the taxpayer's ability to pay as measured by his adjusted gross income for the taxable year.

CHAPTER 803

TAXATION OF INDIVIDUALS, TRUSTS AND ESTATES

§ 5201. Name of tax

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

§ 5202. Tax on income of individuals, estates and trusts

A tax is imposed for each calendar year or fiscal year ending during that calendar year upon the Maine income earned or received in that taxable year by every individual, estate and trust. The amount of this tax shall be measured by ~~2.5%~~ <sup>5%</sup> of the federal income tax liability of the taxpayer for the taxable year, reduced by a percentage equal to the percentage of the taxpayer's adjusted gross income for the taxable year which is not Maine income.

§ 5203. Maine income of individuals, estates and trusts

1. Resident individual, estate or trust. For any taxable year, the Maine income of a resident individual, estate or trust is the adjusted gross income of the taxpayer for that taxable year less:

A. Income exempted from state taxation under the laws of the United States;

B. Military pay for full-time active duty with the armed services.

2. Nonresident individual, estate or trust. For any taxable year, the Maine income of a nonresident individual, estate or trust is the sum of the following items of income to the extent they are required to be included in the adjusted gross income of the taxpayer for the taxable year:

A. Rents and royalties derived from the ownership of property located within this State;

B. Gains from the sale or exchange of property located within this State;

C. Wages, salaries, commissions or other income, excluding military pay for full-time active duty with the armed services, received with respect to services performed within this State;

D. Income, other than income exempted from state taxation under the laws of the United States, derived from every business, trade, occupation or profession of the taxpayer to the extent that the business, trade, occupation or profession is carried on within this State.

3. Part-year resident individual or trust. For any taxable year the Maine income of a part-year resident individual or trust is the sum of:

A. All items of income constituting Maine income for the purpose of subsection 1 which are earned or received during the period of the taxpayer's residency in this State in the taxable year, and

B. All items of income constituting Maine income for the purposes of subsection 2 which are earned or received during the period of the taxpayer's nonresidency in this State in the taxable year.

#### § 5204. Credit for changes in federal law

If, for any taxable year, the tax liability of an individual, estate or trust under this part exceeds, by any amount, what that liability would have been had the "laws of the United States" been defined, under this part, as "the statutes of the United States relating to Federal income taxes in effect on July 1, 1969," the taxpayer shall be entitled to a credit equal to that excess amount plus 6% of such amount, against the taxpayer's tax liability under this part for the next succeeding taxable year. In the event the tax liability of the taxpayer under this part for the next succeeding taxable year is less than the amount of such credit, the difference between such liability and such credit shall be refunded to the taxpayer by the assessor. Any taxpayer claiming a credit under this section shall establish and verify that claim in such manner, and by use of such forms or schedules, as the assessor shall by regulation prescribe.

#### § 5205. Credit for foreign taxes

A taxpayer of this State who was a resident individual, estate or trust during any portion of a taxable year shall receive credit against the tax imposed, for that taxable year, by section 5202 for taxes imposed by, and paid to, another state or territory of the United States, or the District of Columbia, upon his income derived from sources within that state, territory or district during that portion of that taxable year.

#### § 5206. Reciprocal provisions to avoid double taxation

1. Credit for tax payable elsewhere. Whenever a taxable nonresident of this State has become liable to the state, territory, country or District of Columbia where he resides for a tax upon his Maine income for the taxable year, the assessor shall credit the amount of taxes payable by him under section 5202 with such proportion of the tax so payable by him to the state,



territory, country or district where he resides, as his Maine income for that taxable year bears to his entire income upon which the tax so payable to the other state, territory, country or district was imposed; but that credit shall be allowed only if the laws of that state, territory, country or district grant a substantially similar credit to residents of this State subject to income tax under those laws or impose a tax upon the Maine incomes of its residents and exempt from taxation the personal incomes of residents of this State. No credit may be allowed against the amount of tax on any income taxable under this chapter which is exempt from taxation under the laws of that other state, territory, country or district.

2. Refunds; reciprocal agreements. The assessor may enter into a reciprocal agreement with the taxing authority of other states, territories, countries or the District of Columbia regarding the refunding of taxes to taxpayers, resident and nonresident.

#### § 5207. Maximum tax liability

1. Limitation. Notwithstanding any other provisions of this chapter to the contrary, the Maine income tax of an individual for any taxable year shall not in any case equal or exceed an amount, such that the combined Maine and federal income tax liability of the taxpayer for that taxable year, less the federal income tax liability, without consideration of the deduction for Maine income taxes paid or accrued, of the taxpayer for that taxable year exceeds  $4\frac{1}{2}\%$  of the total income of the taxpayer for that taxable year.

2. Definition of total income. For the purposes of this section, the "total income" of any individual for any taxable year means the sum of:

- A. The adjusted gross income;
- B. Any amount of capital gains excluded from adjusted gross income;
- C. Interest on obligations of any state, municipality or the United States of the taxpayer for that taxable year.

### CHAPTER 805

#### TAXATION OF CORPORATIONS

##### § 5301. Name of tax

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

##### § 5302. Tax on income of corporations

A tax is imposed for each calendar year, or fiscal year ending during that calendar year, upon the income earned or received in that taxable year by every taxable corporation, as follows:

5% of the Maine net income of the corporation for that taxable year allocated or apportioned to this State under section 5303.

##### § 5303. Allocation and apportionment of income

1. Definitions. As used in this chapter, unless the context otherwise specifies, the following words shall have the following meanings:

A. Business income. "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

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

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

D. Financial organization. "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, investment company or any type of insurance company.

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

F. Public utility. "Public utility" means any business entity which owns or operates for public use any plant, equipment, property, franchise or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam, oil, oil products or gas.

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

H. State. "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. Taxable income. Any taxpayer having income from business activity which is taxable both within and without this State, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this chapter.

3. Income taxable in another state. For purposes of allocation and apportionment of income under this chapter, 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. Allocation of nonbusiness income. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections 5 to 8.

5. Allocation of net rents and royalties.

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. Allocation of capital gains and losses.

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

8. Allocation of patent and copyright royalties.

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. Apportionment of business income. All business income shall be apportioned to this State by multiplying the income of the corporation 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. Property factor. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this State during the tax period and the

denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Net annual rental rate. 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. Average value of property. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax assessor may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

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

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

16. Sales of personal property within the State. 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
  - (1) The purchaser is the United States Government; or
  - (2) The taxpayer is not taxable in the state of the purchaser.

17. Other sales. 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. Taxpayer may petition. If the allocation and apportionment provisions of this chapter 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.

§ 5304. Computation of gains and losses

For the purpose of ascertaining gain or loss from the sale or other disposition of property, real, personal or mixed, acquired before July 1, 1969, the taxpayer may, in lieu of the adjusted basis prescribed by the applicable United States Internal Revenue Code, use the fair market value of such property as of the above date, adjusted for the period subsequent thereto. In all other respects the gain or loss on the sale or other disposition of property shall be ascertained as prescribed by such Code.

§ 5305. 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 5% 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 5302.

For purposes of chapters 811, 813, 815 and 817, the tax imposed under this section shall be a part of the tax imposed under section 5302.

CHAPTER 807  
WITHHOLDING OF TAXES BY EMPLOYERS

§ 5401. Requirement and rate of withholding

1. Regulations. Every employer, as defined under the laws of the United States with respect to income tax collected at source, paying wages to employees, as defined under those laws, shall deduct and withhold during the calendar year from the wages of each employee such amount as the assessor by regulation shall prescribe.

2. Withholding tables. The regulations issued under this section shall establish such withholding tables, schedules or formulae as will result in the withholding of such amounts from the wages of employees, during any taxable year, as shall closely approximate the income tax liabilities of those employees with respect to those wages for that year under section 5202.

§ 5402. Return and payment of withheld taxes

1. Periodic returns. Every employer required to deduct and withhold any amount under section 5401 shall make return thereof and shall pay over that amount to the assessor as follows:

A. In quarterly payments to be made not later than 30 days following the last day of March, June, September and December of each year, if the employer reasonably estimates that the amount to be deducted and withheld during that quarter will not exceed \$600;

B. In monthly payments to be made not later than 30 days following the close of the calendar month during which the amount was withheld, if paragraph A does not apply;

C. Notwithstanding the foregoing, in weekly payments to be made not later than 7 days following the close of the week for which the return is filed and payment is made, if the assessor so orders; believing that quarterly or monthly payments would result in a delay which, under the circumstances of the case, might jeopardize the collection of the amount. Such an order shall be delivered to the taxpayer by registered mail and shall remain in effect until the assessor notifies the taxpayer to the contrary.

2. Annual returns. In addition to the returns required to be filed and payments required to be made under subsection 1, every employer required to deduct and withhold any tax under section 5401 shall file an annual return

covering the aggregate amount deducted and withheld during the entire preceding year, not later than January 31st of each year. At the time of filing that return the employer shall pay over to the assessor any amount deducted and withheld during the preceding calendar year and not previously paid. The employer shall, further, make such annual report to employees and to the assessor of wages paid and withheld as the assessor by regulation shall prescribe.

§ 5403. Failure by employer to account; maintenance of trust account

If an employer fails at any time to comply with an order under section 5402, subsection 1, paragraph C, to remit amounts deducted and withheld in weekly payments, the assessor may apply to the Superior Court wherein the employer has a place of business, and, upon the complaint and hearing, a justice of that court shall issue an order declaring any amounts thereafter deducted and withheld by the employer under section 5401 to be a trust for the State of Maine. That order shall further require the employer, and, if the employer is a corporation, any principal officer of the corporation, to remit those amounts in weekly payments to, and to file a return with respect to each of those payments under the terms of this chapter with, the court upon pain of contempt of court. The court shall forthwith fix a time and place for hearing and cause notice thereof to be given the employer. Jurisdiction is granted to the Superior Court to hear and determine such matters, and to enter and change such orders from time to time as the nature of the case may require. The costs of the proceeding shall be payable as the court determines. The remittance of those amounts shall be made to the court or, if the court so directs, to the assessor in weekly payments, for such period of time as the assessor determines with the approval of the court, whether or not all tax liabilities theretofore due have been satisfied, having regard to the maintenance of regular future payments by the employer. All amounts and all returns received by the court under this section shall be remitted as soon as is practicable by the court to the assessor.

§ 5404. Liability of employers

1. Withheld amounts. Each employer required to deduct and withhold any amount under section 5401, subsection 1, shall be liable for the payment of that amount, and the amount so deducted and withheld shall be deemed to be a special fund in trust for the State of Maine. The employer is indemnified against the claims and demands of any individual or corporation for any amount withheld and remitted in accordance with this chapter.

2. Failure to withhold. If an employer fails to deduct and withhold any amount in accordance with this chapter, and thereafter the tax liability against which that amount may be credited is paid, that amount shall not be collected from the employer; but the terms of this subsection shall in no case relieve the employer from liability for any fees, penalties or interest otherwise applicable in respect of that failure.

3. Fees, interest and penalties. Any amount required to be deducted and withheld and to be paid over to the assessor, by an employer under this chapter, shall be considered to be a tax liability of the employer for purposes

of this part. The employer shall be subject, with respect to that tax liability, to the provisions of this part including, without limitation, the provisions governing returns, fees for late filing of returns, interest and penalties for nonpayment of tax liabilities, liens, levies and appeals, except as those provisions conflict with the express provisions of this chapter. Any report required to be made under section 5402, subsection 2, or regulations issued thereunder shall be considered to be a return for the purposes of this part.

§ 5405. Reciprocal agreements

The assessor may enter into reciprocal agreements with the taxing authorities of other states, territories, countries or the District of Columbia regarding the deduction and withholding of amounts of income tax from the wages of employees, the payment of those amounts, and the assessment and collection of fees, penalties and interest with respect thereto.

## CHAPTER 809

## ESTIMATIONS OF NONWITHHELD INCOME TAX

## § 5501. Definition of "nonwithheld tax"

For purposes of this chapter, "nonwithheld tax" means, for any taxpayer and for any taxable year, the income tax liability of the taxpayer for that taxable year under section 5202, less the amount deducted and withheld from the wages of that taxpayer, under chapter 807, with respect to that taxable year.

## § 5502. Estimation and payment of nonwithheld tax

Every individual subject to taxation under section 5202, other than a person receiving at least  $\frac{2}{3}$  of his income from farming or fishing as defined under the laws of the United States, shall make an estimate of his nonwithheld tax for any taxable year if the amount of the taxpayer's nonwithheld tax for the 12-month period immediately preceding that taxable year was more than \$40. The amount of that estimated nonwithheld tax shall be payable to the assessor during that taxable year in the same manner and at the same times as required under the laws of the United States, unless the assessor by regulation otherwise prescribes.

## § 5503. Declaration of nonwithheld tax

1. Failure to file declaration. If, for any taxable year, a taxpayer subject to section 5502 fails to notify the assessor to the contrary under this section, the estimated nonwithheld tax of that taxpayer for that taxable year shall be deemed to be, for purposes of section 5502, an amount equal to the amount of the nonwithheld tax of the taxpayer for the 12-month period immediately preceding that taxable year.

2. Declaration. If, for any taxable year, a taxpayer subject to section 5502 reasonably estimates that his nonwithheld tax, for that taxable year, will be an amount greater or less than the amount of the taxpayer's nonwithheld tax for the 12-month period immediately preceding that taxable year, the taxpayer may file with the assessor a declaration of that estimated nonwithheld tax at the time the Maine personal income tax return of the taxpayer for the next preceding taxable year was required to be filed, unless the assessor by regulation otherwise prescribes. The amount of estimated nonwithheld tax so declared shall be considered to be the estimated nonwithheld tax of the taxpayer, for that taxable year, for purposes of section 5502.

3. Husband and wife; joint and separate declarations. If a husband and wife have filed a joint personal income tax return for the 12-month period immediately preceding any taxable year, and are subject to section 5502 for that taxable year, the payments of estimated nonwithheld tax required to be made under that section shall be deemed to be a joint obligation of the husband and wife unless they file separate declarations of estimated nonwithheld tax, for that taxable year, under subsection 2. If a husband and wife file, for any taxable year, a joint declaration of estimated tax under subsection 2, the payments of estimated nonwithheld tax required to be made by the husband and wife under section 5502 shall be considered to be the joint obligation of the husband and wife. If a husband and wife have made any payments with respect to a joint obligation to pay estimated nonwithheld taxes for any taxable year under section 5502, and those taxpayers thereafter file separate Maine and federal income tax returns for that taxable year, the total amount of the payments may be treated as the payment of either the husband or the wife, or may be divided between them.



§ 5504. Under-estimations of nonwithheld tax

If a taxpayer has filed a declaration of estimated nonwithheld tax, for any taxable year, estimating that the amount of his nonwithheld tax will be less than the amount of his nonwithheld tax for the 12-month period immediately preceding that taxable year, and if the amount of that taxpayer's nonwithheld tax for that taxable year in fact exceeds the amount of the estimate, the taxpayer shall either:

File his Maine personal income tax return for that taxable year, and pay the full amount of the tax liability with respect thereto, not later than the last day of the first month following the end of the taxable year; or

Pay an amount of interest, without assessment or demand, equal to 6% of the difference between the amount of the taxpayer's nonwithheld tax for that taxable year and the amount of his estimated nonwithheld tax for that year. That amount of interest shall be payable on the date on which the taxpayer's Maine personal income tax return for that taxable year is required to be filed under this part.

§ 5505. Payments as tax liability

Any payment of estimated nonwithheld tax or penalty required to be made under this chapter shall be deemed to be a tax liability for the purposes of this part, and any taxpayer required to make payments of estimated nonwithheld tax under this chapter shall be subject, with respect thereto, to the provisions of this part including, without limitation, the provisions governing interest and penalties for nonpayment of tax liabilities, liens, levies and appeals, except as such provisions conflict with the express provisions of this chapter.

## CHAPTER 811

### RETURNS

§ 5601. Returns by individuals, trusts and estates

1. Who must file. Every individual, trust or estate subject to taxation for any taxable year under section 5202 shall file a Maine personal income tax return for that taxable year if that individual, trust or estate is required to file a United States income tax return for that year and earned or received more than \$100 of Maine income in that year.

2. Date of filing. The return required to be filed under this section shall be filed on or before the date a United States income tax return is required to be filed by the individual, trust or estate under the laws of the United States for the taxable year.

3. Husband and wife; joint returns. A husband and wife or a surviving spouse may file a joint Maine personal income tax return for any taxable year for which the husband and wife or surviving spouse are permitted to file a joint federal income tax return under the laws of the United States.

4. Joint returns; measure of tax. If a joint Maine personal income tax return is filed by a husband and wife or by a surviving spouse for any taxable year, the tax under this part shall be measured by the joint federal income tax liability of the taxpayers for that taxable year and their liability with respect to the tax under this part shall be joint and several.

§ 5602. 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 States income tax return is required to be filed for that year by that corporation under the laws of the United States.

## § 5603. 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 5607, 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.

## § 5604. 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 5603, 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 the taxpayer, and, if the taxpayer is a corporation,

any principal officer of such corporation, 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 20 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. The judgment shall include costs in favor of the prevailing party.

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 5603, 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 5801.

## § 5605. 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, papers, 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 nonresident individual, estate, trust, or 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.

§ 5606. 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 materially false, inaccurate or incomplete;

B. Is notified of any assertion by the United States, whether under section 6212 of the Internal Revenue Code of 1954 or otherwise, that his taxable income, or income tax liability, 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 30 days of receipt of that information or notification of that assertion or filing that amended return, 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.

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.

§ 5607. 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.

§ 5608. Extension of time for filing of returns

For good cause shown, 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  $\frac{1}{2}$  of 1% per month on that tax liability from the time when the tax liability was originally required to be paid to the time of payment.

§ 5609. Penalty for late filing

1. Failure to file. When a taxpayer, without fraud or willful intent to defeat or evade any tax liability imposed by this part, fails to file a return at the time prescribed by this part, the taxpayer shall pay, at the time that return is filed, without assessment or demand, in addition to the tax liability due, if any, a late filing penalty, as follows:

A. If that return was other than a withholding tax return, \$2 for each 30 days or fraction thereof expiring before the filing of a proper return in accordance with this part.

B. If that return was a withholding tax return, \$10 for each 30 days or fraction thereof expiring before the filing of a proper return in accordance with this part.

2. Fraudulent or willful failure to file. When a taxpayer fraudulently or with willful intent to defeat or evade any tax liability imposed by this part fails to file a return at the time prescribed by this part, the taxpayer shall

pay, at the time that return is filed, without assessment or demand, in addition to the tax liability due, if any, a late filing fee of \$25 for each 30 days or fraction thereof expiring before the filing of a proper return in accordance with this part.

#### CHAPTER 813

#### PAYMENT OF INCOME TAXES

##### § 5701. Payments by individuals, trusts and estates

In the case of individuals, trusts and estates, the income tax liability imposed by this part shall be discharged as follows:

1. Withholding. In the case of those taxpayers whose wages are subject to withholding, by periodic withholding within the taxable year for which the tax is imposed, or within such longer period as the assessor by regulation may prescribe;

2. Estimated tax. In the case of those taxpayers required to make installment payments of estimated nonwithheld tax under chapter 809, by those payments;

3. Final payment. All income tax liabilities not theretofore discharged by withholding or installment payments shall be paid on or before the date when the return of the taxpayer for the taxable year is required to be filed.

##### § 5702. Payment by corporations

In the case of 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 second installment shall be discharged not later than 90 days after the date on which the return of the corporation for the taxable year is required to be filed.

##### § 5703. Extension of time for payment

For good cause shown, the assessor may extend the time for the payment of any tax liability, but the taxpayer shall pay, at the time the tax liability is paid, without assessment or demand, an amount of interest computed at the rate of  $\frac{1}{2}$  of 1% per month on that tax liability from the time when the liability was originally due to the time of payment.

##### § 5704. 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.

##### § 5705. Penalty and interest for delinquent payment

1. Failure to pay. When a taxpayer, without fraud or willful intent to defeat or evade a tax liability imposed by this part, fails to pay that tax liability:

A. At the date prescribed therefor by this part, and if the failure does not indicate a negligent disregard of this part, the assessor may assess and the taxpayer shall then pay, in accordance with section 5801, a penalty equal to 5% of that tax liability and a sum of interest computed at the rate of 1% per month on the amount of that tax liability for the period from the prescribed date to the date of full payment of the liability;

B. Within 60 days after the date prescribed therefor by this part, and the failure indicates a negligent disregard of this part, the assessor may assess and the taxpayer shall then pay, in accordance with section 5801, a penalty equal to 25% of that tax liability and interest computed at the rate of 1% per month on the amount of that tax liability for the period from the prescribed date to the date of the full payment of the liability.

2. Fraudulent or willful failure to pay. When a taxpayer fraudulently or with willful intent to defeat or evade a tax liability imposed by this part, fails to pay that tax liability at the date prescribed therefor by this part, the assessor may assess and the taxpayer shall then pay, in accordance with section 5801, a penalty equal to the amount of the tax liability and interest computed at the rate of 1% per month on the amount of that tax liability for the period from the prescribed date to the date of full payment of the liability.

3. Limitation. Notwithstanding the foregoing provisions of this section, any penalty payable by a taxpayer under this section shall be reduced by the amount of any fee paid by the taxpayer under section 5609 for a failure to file the return with respect to that tax liability.

#### CHAPTER 815

#### DEFICIENCIES, ASSESSMENTS, REFUNDS AND APPEALS

##### § 5801. 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.

##### § 5802. 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 5801, 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;

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 5801 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.

§ 5803. Determination of deficiency, penalty or interest

Upon receipt of a notice of deficiency or assessment of penalty or interest under section 5801, the taxpayer may, within 20 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.

§ 5804. Refunds; petitions for refunds

1. Petition; hearing; 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, or an amount of taxable income, under the laws of the United States, reported in a return filed under the laws of the United States for the taxable year, with respect to which that return was filed under this part, 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. Unless the period is extended by agreement of the assessor and the taxpayer, the assessor shall thereafter, upon notice to the taxpayer, hold a hearing on the claim and shall notify the taxpayer of his determination of the claim within 30 days of the hearing. The failure of the assessor to refund the amount claimed by a taxpayer within 6 months of the date of the petition for the refund, under this subsection, shall be considered to be a notification to the taxpayer of the assessor's determination concerning the claim. The notification shall be considered to have been given on the date of the expiration of the 6-month period.

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 6% per year. 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.

§ 5805. Procedure for hearings by assessor ; appeals

1. Procedure. Any hearing granted by the assessor under section 5803 or 5804 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 resides or has a place of business, or if he does not reside or have 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.

§ 5806. Payment and collection of deficiencies and assessment ;  
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 5801, the amount of the assessment shall be payable forthwith and the amount of the deficiency and assessment shall be collectible by the assessor 20 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 within 20 days of the notification of deficiency or the assessment under section 5801 the taxpayer files a petition for determination by the assessor in accordance with section 5803, 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 5805, 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 5801. 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 purposes of this section.

§ 5807. 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 5804, and the appeal from an adverse determination of the petition for refund provided under section 5805. The exclusive remedy of a taxpayer with respect to a notification of deficiency or assessment of penalty or interest under section 5801 shall be the petition for determination of the deficiency or assessment provided under section 5803, and the appeal from an adverse determination of deficiency or assessment provided under section 5805.

2. Finality. Upon the failure of a taxpayer to petition in accordance with section 5803 from a notice of deficiency or assessment under section 5801, or to appeal in accordance with section 5805 from a determination of a deficiency or assessment of tax liability under section 5803, 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.

§ 5808. 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 or income tax liability under the laws of the United States shall be determined by reference to the judicial decisions and administrative rulings 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 or income tax liability 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 of 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 817

#### ENFORCEMENT AND COLLECTION

##### § 5901. 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.

##### § 5902. 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 5806. 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.

§ 5903. 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 5806, 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.

§ 5904. Liability for failure or delinquency

An individual, fiduciary, or officer or employee of any corporation or partner or employee of any partnership, 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.

§ 5905. Tax liability as property lien

1. Creation and effect of lien. If any corporation, partnership, individual, trust or estate 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 5801, 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, partnership, individual, trust or estate. 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 is 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 5806 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 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 decree 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. Liability of employers for withholding. Liability of employers to withhold from the wages of employees under this Act shall become effective not later than 60 days following the effective date of this Act.

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

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect July 1, 1969.

Statement of Facts

Amendment of the personal income tax rate to equal 5% of the federal income tax liability and the corporate income tax at 5% of net Maine income, both effective January 1, 1969, would increase revenues to the General Fund for the biennium by \$45,000,000.'

IN SENATE CHAMBER On Motion of SEN. BERRY OF CUMBERLAND

INDEFINITELY POSTPONED

JUL 19 1969

(Violette)  
NAME:



FILING NO. S<sup>1</sup> 305

COUNTY: Aroostook

JERROLD B. SPEERS, Secretary