

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1612

House of Representatives, June 24, 1969
Filed by Mr. Jalbert of Lewiston. Printed under House Rule 33.
BERTHA W. JOHNSON, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

HOUSE AMENDMENT "C" to H. P. 1281, L. D. 1608, 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 and Raising Revenue for Funding Thereof."

Amend said Bill by striking out all of "SECTION D" and inserting in place thereof the following:

'SECTION D

Sec. 1. R. S., T. 36, Part 9, additional. Title 36 of the Revised Statutes is amended by adding a new part 9, to read as follows:

PART 9

TAX ON INCOME FROM INTEREST AND DIVIDENDS

CHAPTER 821

INCOME TAX — INTEREST AND DIVIDENDS

§ 5701. Definitions

1. Assessor. "Assessor" means the State Tax Assessor.
2. Resident. "Resident" shall have reference to place of domicile.

§ 5702. Rate

An annual tax upon income shall be levied at the rate of 6%.

§ 5703. Conformity to laws

It is the intention of this chapter, and it shall be construed, anything contained in this chapter to the contrary notwithstanding, not to impose any tax

upon any income in violation of the Constitution or laws of the United States, or in violation of the Constitution of this State.

§ 5704. Who taxable

Taxable income is that received during the calendar year prior to the assessment of the tax by:

1. Individuals. Individuals who are residents of this State on January 1st in any year, and individuals who have ceased to be residents of this State during the preceding calendar year for such part of the year as they were resident in this State;

2. Partnerships, etc. Partnerships, associations and trusts, the beneficial interest in which is not represented by transferable shares, and as provided in this chapter;

3. Fiduciaries. Fiduciaries deriving their appointment from a court of this State, and as provided in this chapter.

§ 5705. What taxable

Income of the following described classes is taxable:

1. Interest. Interest from bonds, notes, money at interest and from all debts due the person to be taxed, except interest from notes or bonds of this State, deposits in any savings bank, building and loan association, credit union, or savings department of any loan and trust company or national bank in this State or in those of any state which exempts from taxation the principal or income of deposits in such institutions in this State owned by residents of that state, and notes or bonds of any political subdivision of this State.

2. Dividends. Dividends, other than stock dividends paid in new stock of the company issuing the same, on shares in all corporations and joint stock companies organized under the laws of any state, territory or nation, except Maine state banks, trust companies, building and loan associations or national banks.

3. —partnerships. Dividends, other than stock dividends paid in new stock of the partnership, association or trust issuing the same, on shares in partnerships, associations or trusts the beneficial interest in which is represented by transferable shares.

§ 5706. Exemption

Two thousand dollars of each income otherwise taxable shall be exempt.

§ 5707. Income from pledged property

For the purposes of this chapter, any securities or property of the classes designated in this chapter producing taxable income, held in pledge, or on margin, or otherwise as security for a debt of the owner, whether standing in the name of the owner or of any other person, shall be deemed the property of the owner, and the income arising therefrom shall be included in his total taxable income.

§ 5708. Capital distribution

No distribution of capital, whether in liquidation or otherwise, shall be taxable as income, but accumulated profits shall not be regarded as capital.

§ 5709. Nontaxable income

No tax shall be levied under this chapter upon any income otherwise taxable under this chapter, which is received by any literary and scientific or benevolent and charitable institution entitled to property tax exemption under the laws of this State, for the purposes for which it is established; or which is received by any trustee for the use of the State or any of its political subdivisions, or for the use of such organization for such purposes.

§ 5710. Decedents' estates

The estates of deceased persons who last dwelt in this State shall be subject to the taxes imposed by this chapter upon all taxable income received by such persons during their lifetime, which has not already been taxed. The income received by such estates during administration shall be taxable to the estate, except such proportion thereof as equals the proportion of the estate to be distributed to nontaxable persons or organizations. The assessor and executors and administrators of estates may effect a settlement by compromise of any question of doubt or dispute arising under this section.

§ 5711. Income from trusts

The income received by estates held by trustees, any one of whom is a resident of this State, or has derived his appointment from a court of this State, shall be subject to the taxes imposed by this chapter to the extent that the persons to whom the income from the trust is payable, or for whose benefit it is accumulated, are residents of this State.

§ 5712. Accumulations

Income accumulated in trust for the benefit of unborn or unascertained persons shall be taxed as if accumulated for the benefit of residents of this State.

§ 5713. From nonresident trustees

If a resident of this State receives income from one or more trustees, none of whom is a resident of this State or has derived his appointment from a court of this State, such income shall be subject to the taxes imposed by this chapter if it would be taxable to such resident if received by him from its source.

§ 5714. Guardians, etc.

Sections 5710 to 5713 shall apply to guardians, conservators, trustees in bankruptcy, receivers and assignees for the benefits of creditors, so far as apt, to the taxable income received by them and to their beneficiaries, and to corporations acting as trustees or in any other fiduciary capacity.

§ 5715. Partnerships

Partnerships having a usual place of business in this State, any member of which is a resident thereof, shall be subject to taxes imposed by this chapter. If any of the members of the partnership are not residents of this State only so much of the income thereof as is proportionate to the aggregate interest of the partners who are residents of this State in the profits of the partnership shall be taxed.

§ 5716. Partners

The tax shall be assessed on such a partnership by the name under which it does business, and the partners shall not be taxed with respect to the taxable income derived by them from such a partnership.

§ 5717. Members of partnership outside the State

A resident of this State who is a member of a partnership having no usual place of business in this State, who receives income from such partnership derived from such a source that it would be taxable if received directly from such source by such partner, shall as to such income be subject to the taxes imposed by this chapter.

§ 5718. Application of sections

Sections 5715 to 5717 shall apply, so far as apt, to associations and trusts, but not partnerships, associations and trusts, the beneficial interest in which is represented by transferable shares.

§ 5719. Small business corporations; information reports

Every small business corporation within this State, the stockholders of which have elected, or elect, to report their share of the corporation's taxable income upon their individual federal income tax returns, pursuant to federal tax laws and regulations, shall annually on or before May 1st file a list of the names and addresses of all stockholders during the preceding year together with the amount of dividends paid to each with the assessor.

§ 5720. Returns

A return shall be filed on or before May 1st annually by each taxpayer who received taxable income in excess of \$1,000 during the preceding calendar year. Such return shall be made under the penalties of perjury.

§ 5721. Assessor's records confidential

The records and files of the assessor respecting the administration of this chapter shall be confidential and privileged, and neither the assessor nor any employee engaged in the administration of this chapter or charged with the custody of any such records or files shall divulge or disclose any information obtained from said records or files or from any examination or inspection of the premises or property of any person. Neither the assessor nor any employee engaged in the administration of this chapter or charged with the custody of any such records or files shall be required to produce any of them for the inspection of any person or for use in any action or proceedings except in behalf of the assessor, in an action or proceeding under this chapter to

which the assessor is a party, or in behalf of any party to any action or proceeding under this chapter when the records or files or the facts shown thereby are directly involved in any such action or proceedings.

Nothing contained in this chapter shall be construed to prevent:

1. Reports. The delivery to a taxpayer or his duly authorized representative of a copy of any report or any other paper filed by him pursuant to this chapter;

2. Statistics. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

3. Information to governmental officers. The disclosure of information to duly authorized officers of the United States and of other states, districts and territories of the United States and of the provinces and Dominion of Canada. Such information may be given only on the written request of the duly authorized officer when the said officer's government permits the exchange of like information with the taxing officials of this State and when the said officer agrees that such information shall be used only for tax collection purposes.

§ 5722. Information as to filing of returns

The assessor shall, on request, state the fact whether or not any person has filed an income tax return for the current or any prior year.

§ 5723. Payment; interest

All taxes shall be assessed as of January 1st in each year, and payment thereof shall be made at the time the return is filed on or before May 1st. If taxes are not paid on or before May 15th, interest at the rate of $\frac{1}{2}$ of 1% for each month or fraction thereof from the said May 1st shall be added, and the said May 1st shall be deemed to be the due date for all taxes assessed and collected under this chapter. When an extension of time has been granted under section 5720, the date specified in the said extension shall be deemed to be the due date, and interest at the rate of $\frac{1}{2}$ of 1% for each month or fraction thereof shall be added if payment is not made with 15 days after that date.

§ 5724. Overpayments

If upon audit of a tax return it is found that an overpayment of the tax has been made in an amount not more than \$10, such overpayment shall be held and credited against the tax to be paid in the succeeding year unless the person making the overpayment shall request in writing that a refund of the amount overpaid be made to him.

§ 5725. Warrant; request for

If any amount required to be paid to the State under this chapter is not paid when due, and has become final as to law and fact under section 5734 or 5735, the assessor may, within 3 years after the amount has become final, notify the person who according to the records of the assessor is liable,

specifying the amount required to be paid, interest and penalty due, and demanding payment within 12 days after the sending of such notice. Such notice shall warn the person that if he does not make the payment as demanded the assessor will certify the amount due to the Attorney General for collection by warrant as provided.

If the person does not make the payment as demanded within said 12-day period, or such extension thereof as the assessor may allow, the Assessor shall certify the amount required to be paid, interest and penalty, to the Attorney General for collection. The Attorney General may file in the office of the clerk of the Superior Court of Kennebec County, or any county, a certificate addressed to the clerk specifying the amount required to be paid, interest and penalty due, the name and address of the person liable as it appears on the records of the assessor, the facts whereby said amount has become final as to law and fact, the notice given, and requesting that a warrant be issued against the person in the amount required to be paid, together with interest and penalty as set forth in the certificate, and with costs.

If the assessor thinks there are just grounds to fear that such person may abscond within the 12-day period, he shall not be required to give notice to the person and may, without further notice, certify the amount due to the Attorney General for collection.

§ 5726. Issuance

The clerk of the Superior Court, immediately upon the filing of the certificate, shall issue a warrant in favor of the State of Maine against the person in the amount to be paid together with interest and penalty as set forth in the certificate, and with costs.

The clerk of the Superior Court shall file the certificate in a looseleaf book entitled, "Special Warrants for Personal Income Tax." These records are not to become a part of the extended record of said court.

§ 5727. Recording; lien

An abstract of the warrant or a copy may be filed for record with the register of deeds of any county. From the time of filing, the amount required to be paid, together with interest, penalty and costs, constitutes a lien upon all the real property in the county owned by the person liable or acquired by him afterwards and before the lien expires. The lien has the force, effect and priority of a judgment lien and shall continue for 5 years from the date of recording unless sooner released or otherwise discharged. The lien may, within said 5-year period or within 5 years from the date of the last extension of the lien in the manner provided in this section, be extended by filing for record in the office of the register of deeds an abstract or copy of the warrant and from the time of such filing the lien shall be extended for 5 years unless sooner released or otherwise discharged.

§ 5728. Form and effect

The warrant shall have the force and effect of an execution issued upon a

judgment in a civil action for taxes and may be in substantially the following form:

“....., ss. To the Sheriffs of our respective counties or (Name of county) either of their Deputies,

Whereas, the Attorney General has certified that, pursuant to the terms of Title 36, section 5734 or 5735, or both, of the Revised Statutes the amount of certain personal income taxes, assessed against of with interest and penalty, has become final as to law and fact, to wit:

Personal Income Tax \$
Penalty
Interest
Total \$
and \$..... costs of this proceeding,
and the same is unpaid;

We command you, therefore, that of the money, goods, chattels or lands of said debtor, in your precinct, or the value thereof in money, you cause to be paid and satisfied unto the State of Maine said total and costs, and cents more for this warrant, together with your own fees.

And for want of money, goods, chattels or lands of said debtor, to be by him shown unto you, or found in your precinct, to the acceptance of the Attorney General of the State of Maine, to satisfy the sums aforesaid, we command you to take the body of said debtor, and commit him unto any of our jails in said counties, and there detain in your custody, until he shall pay the full sums aforesaid, with your fees, or be discharged by said State of Maine, or otherwise by order of law.

Hereof fail not, and make due return of this warrant, with your doings thereon, unto my office within one year from the date hereof.

.....
Clerk of Courts, County of
Date

Warrants shall be returnable within one year. New warrants may be issued on any such certificate within 2 years from the return day of the last preceding warrant for sums remaining unsatisfied.

Warrants shall be served by the sheriff of any county or by any of his deputies in the county where the person may be found.

§ 5729. Arrest and commitment

When an officer by virtue of said warrant, for want of property, arrests any person and commits him to jail, he shall give an attested copy of his warrant to the jailer and certify, under his hand, the sum that such person is to pay as his tax, interest and penalty and the costs of obtaining the war-

rant, and the costs of arresting and committing, and that for want of goods and chattels whereon to levy he has been arrested; and such copy and certificate are a sufficient warrant to require the jailer to receive and keep such person in custody until he pays his tax, said other charges and \$1 for the copy of the warrant; but such person shall have the same rights and privileges as a debtor arrested or committed on execution as provided in Title 14, chapters 503 and 505.

No married woman or officer of a debtor corporation shall be arrested under this warrant.

§ 5730. Priority of tax

Whenever any person liable for any tax levied is insolvent, whenever any such person makes a voluntary assignment of his assets, whenever the estate of a deceased person liable in the hands of the executors, administrators or heirs is insufficient to pay all the debts due from the deceased or whenever estate and effects of an absconding, concealed or absent person liable are levied upon by process of law, the tax, together with interest attaching thereto, shall be first settled. This section shall not be construed to give the State a preference over any recorded lien which attached prior to the date when the tax became due.

§ 5731. To whom payable

To whom payable. All taxes assessed hereunder shall be paid to the assessor. The assessor shall pay over all receipts collected to the Treasurer of State daily and such receipts shall be credited to the General Fund.

§ 5732. Reassessment

If upon examination of a return, it shall appear that the amount of the tax exceeds the correct amount due, or is deficient, the assessor shall redetermine the amount of the tax and notify the taxpayer of such correction. In the event that the assessor determines a deficiency, the amount of said deficiency and interest at the rate of $\frac{1}{2}$ of 1% for each month or fraction thereof from the original due date shall be paid by the taxpayer within 15 days from the date of the notice herein provided. In the event the assessor determines an overpayment, the amount of the excess, together with interest at the rate of $\frac{1}{2}$ of 1% per month or fraction thereof from the date of overpayment, shall be repaid to the taxpayer. A determination made under this section shall be subject to the same right of abatement and appeal as provided in sections 5734 and 5735. Nothing contained in this chapter shall be construed to limit the power of the assessor to make a later assessment under section 5737 or to seek a penalty for fraudulent returns as provided by section 5740.

§ 5733. Abatement

The assessor may, within 3 years from the assessment, if justice requires, make an abatement of any tax, interest or penalties assessed under this chapter.

§ 5734. Application for abatement

Any person aggrieved by the assessment of any tax under this chapter may apply in writing to the assessor for an abatement within 15 days after notice of the assessment. Upon failure to apply for abatement as provided, the amount of the assessment becomes final as to law and fact.

§ 5735. Appeal

If the abatement is not granted by the assessor an appeal may be taken to the Superior Court of the county in which the taxpayer resides, or to the Superior Court of Kennebec County. Said appeal shall be taken within 30 days after notice of the decision of the assessor. 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 said affidavit. Jurisdiction is granted to the Superior Court to hear and determine such appeals and to enter such order and decrees as the nature of the case may require. The decision upon 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. Upon failure to appeal as provided, the amount of the assessment becomes final as to law and fact.

§ 5736. Minor over or under payments disregarded

Whenever it appears upon audit of his return that a taxpayer has overpaid his tax or has failed to pay the correct amount due and the discrepancy is less than \$1, the Assessor may, in his discretion, disregard the error and consider the matter closed if in his opinion the cost to the State to rectify the error would exceed the amount involved.

§ 5737. Correction of assessment

At any time within 3 years from May 1st in any year if the assessor shall find that any taxable person did not file a return, or filed a false, fraudulent, insufficient or incorrect return and would have been liable for a tax or for a greater tax than that assessed, the assessor may assess and collect such tax, or any additional tax found to be due together with the penalties imposed.

§ 5738. Tax a debt; recovery; preference

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

§ 5739. Penalty for delay in filing return

If any taxpayer fails to file a return within the time prescribed there shall be added to his tax a penalty of \$5 or 5% of his tax liability, whichever is greater. The assessor may waive the whole or any part of such penalty for good cause.

§ 5740. Penalty; fraudulent or incorrect return

Whoever files a fraudulent return, and whoever, having failed to file a return or having filed an incorrect or insufficient return without reasonable excuse, fails to file a return within 20 days after receiving notice of such delinquency from the assessor, shall be punished by a fine of not less than \$100 nor more than \$2,000, or by imprisonment of not more than one year, or by both.

§ 5741. Powers of assessor

The Assessor is authorized and empowered to carry into effect this chapter and, in pursuant thereof, to make and enforce such reasonable rules and regulations consistent with this chapter as he may deem necessary.

§ 5742. Assistants

The assessor is authorized to employ such assistants, subject to the Personnel Law, as may be necessary.

§ 5743. Examination of records

The assessor, whenever he shall deem it expedient, may make or cause to be made by any employee of the assessor engaged in the administration of this chapter, an examination of the books, records, papers, vouchers, accounts and documents of any taxpayer. It shall be the duty of every taxpayer to exhibit to the assessor or to any such employee of the assessor, all of the books, records, papers, vouchers, accounts and documents of the said taxpayer, and to facilitate any such examination or investigation so far as it may be in his power to do so. It shall be lawful for the assessor, or any employee of the assessor by him thereto duly authorized, to take the oath of any person signing any application, deposition, statement or report required by the assessor in the administration of this chapter. This section shall apply to any person who, the assessor has reason to believe, is liable to the payment of a tax under this chapter.

§ 5744. Hearings

The assessor or any employee of the assessor by his thereto designated may conduct hearings, administer oaths to and examine under oath any taxpayer as well as all other witnesses relative to any matter incident to the administration of this chapter. This section shall apply to any person who, the assessor has reason to believe, is liable for the payment of a tax under this chapter.

§ 5745. Witnesses

The assessor or any of his authorized agents shall have the power to compel the attendance of witnesses and the production of any books, records, papers, vouchers, accounts or documents of any person who, the assessor has reason to believe, is liable to the payment of a tax under this chapter, or of any person believed to have information pertinent to any matter under investigation by the assessor, to any hearing held pursuant to this chapter. The fees of witnesses required to attend any such hearing shall be the same as those allowed to witnesses appearing in the Superior Court but no fee shall be payable to a witness charged with tax liability under this chapter. Such

fees shall be paid in the manner provided for the payment of the other expenses incident to the administration of this chapter. The powers granted by this section may be exercised by any employee of the assessor authorized by him.

Any examination on oath conducted by the assessor may in his discretion be reduced to writing and false swearing therein shall be deemed perjury and be punishable as such.

The Superior Court upon application of the assessor may compel the attendance of witnesses and the giving of testimony before the assessor in the same manner, to the same extent and subject to the same penalties as if before said court.

§ 5746. Notices, how given

Any notice required to be given by the assessor pursuant to this chapter to any person may be served personally, or by sending the same by registered or certified mail to the person for whom it is intended, addressed to such person at the address given in the last report filed by him pursuant to this chapter, or if no report has been filed, then to the address of his last known abode; or in the case of other than an individual to the last known business address.

Sec. 2. Effective date. Section D of this Act shall become effective as to income on and after January 1, 1969.'