

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 227

H. P. 164

House of Representatives, January 19, 1971

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

BERTHA W. JOHNSON, Clerk

Presented by Mr. Cottrell of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Relating to Administration of the State Income Tax.

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

Sec. 1. R. S., T. 30, § 1051, sub-§ 20, additional. Section 1051 of Title 30 of the Revised Statutes, as amended, is further amended by adding a new subsection 20, to read as follows:

20. Service of an income tax warrant. For the service of an income tax warrant and arrest as provided by Title 36, chapters 801 to 839, the same as for service of civil process, and for civil arrests. For collecting income tax, penalties and interest, pursuant to such warrants, for every dollar of the first \$100, 4¢; for every dollar above \$100 and not exceeding \$200, 3¢; and for every dollar above \$200, 2¢. Additional services, including travel, shall be charged as elsewhere in this section provided.

Sec. 2. R. S., T. 36, § 5102, sub-§ 6, amended. Subsection 6 of section 5102 of Title 36 of the Revised Statutes, as enacted by section F of chapter 154 of the private and special laws of 1969, is amended to read as follows:

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

Sec. 3. R. S., T. 36, § 5102, sub-§ 11, amended. The last 2 sentences of subsection 11 of section 5102 of Title 36 of the Revised Statutes, as enacted by section F of chapter 154 of the private and special laws of 1969 and as last repealed and replaced by chapter 553 of the public laws of 1969, are amended to read as follows:

Any reference in this part to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto and other provisions of the laws of the United States relating to federal income taxes as of January 1, ~~1970~~ 1971. This amendment shall be effective as to items of income, deductions, loss or gain accruing in taxable years ending on or after January 1, ~~1970~~ 1971 but only to the extent such items have been earned, received, incurred or accrued on or after such effective date.

Sec. 4. R. S., T. 36, § 5111-A, additional. Title 36 of the Revised Statutes is amended by adding a new section 5111-A, to read as follows:

§ 5111-A. Alternate method of computation

In lieu of a tax computed according to the rates set forth in section 5111, the tax of any individual taxpayer whose adjusted gross income for the taxable year is less than \$10,000, at his election shall be computed in accordance with tables prepared and issued by the assessor. Such tables shall approximate, as nearly as may be practicable, tax computed on the basis of section 5111.

Sec. 5. R. S., T. 36, § 5229, sub-§§ 1 & 2, amended. Subsections 1 and 2 of section 5229 of Title 36 of the Revised Statutes, as enacted by section F of chapter 154 of the private and special laws of 1969, are amended to read as follows:

1. Time for filing. A declaration of estimated tax of an individual other than a farmer or fisherman shall be filed on or before April 15th of the taxable year, except that if the requirements of section 5228 are first met:

A. After April 1st and before June 2nd of the taxable year, the declaration shall be filed on or before June 15th, or

B. After June 1st and before September 2nd of the taxable year, the declaration shall be filed on or before September 15th, or

C. After September 1st of the taxable year, the declaration shall be filed on or before January 15th of the succeeding year.

2. Declaration by farmer or fisherman. A declaration of estimated tax required by section 5228 from an individual having an estimated adjusted gross income from farming or fishing in this State for the taxable year which is at least $\frac{2}{3}$ of his total estimated adjusted gross income taxable in this State for the taxable year, may be filed at any time on or before January 15th of the succeeding taxable year, in lieu of the time otherwise prescribed.

Sec. 6. R. S., T. 36, § 5241, amended. The first sentence of section 5241 of Title 36 of the Revised Statutes, as enacted by section F of chapter 154 of the private and special laws of 1969, is amended to read as follows:

Every partnership having a resident partner or having any income derived from sources in this State, determined in accordance with the applicable rules of section 5142 as in the case of a nonresident individual, shall, **if required by the assessor**, make a return for the taxable year setting forth all items of income, gain, loss, and deduction, and the names and addresses of

the individuals whether residents or nonresidents who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual and such other pertinent information as the assessor may prescribe by regulations and instructions.

Sec. 7. R. S., T. 36, § 5250, sub-§ 1, amended. The first sentence of subsection 1 of section 5250 of Title 36 of the Revised Statutes, as enacted by section F of chapter 154 of the private and special laws of 1969, is amended to read as follows:

Every employer maintaining an office or transacting business within this State and making payment of any wages taxable under this part to a resident or nonresident individual shall, **if required to withhold federal income tax from such wages**, deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee under this part with respect to the amount of such wages included in his adjusted gross income during the calendar year.

Sec. 8. R. S., T. 36, § 5253, sub-§ 1, amended. The first 2 sentences of subsection 1 of section 5253 of Title 36 of the Revised Statutes, as enacted by section F of chapter 154 of the private and special laws of 1969, are amended to read as follows:

Every employer required to deduct and withhold tax under this part shall, for each calendar quarter, on or before the ~~fifteenth~~ last day of the month following the close of such calendar quarter, file a withholding return as prescribed by the assessor and pay over to the assessor or to a depository designated by the assessor, the taxes so required to be deducted and withheld ~~except that for the fourth quarter of the calendar year, the return shall be filed and the taxes paid on or before January 31st of the succeeding year.~~ Where the aggregate amount required to be deducted and withheld by any employer for a calendar month exceeds ~~\$500~~ \$100, the employer shall by the ~~15th~~ last day of the succeeding month pay over such aggregate amount to the assessor or to a depository designated by the assessor.

Sec. 9. R. S., T. 36, § 5255-A, additional. Title 36 of the Revised Statutes is amended by adding a new section 5255-A, to read as follows:

§ 5255-A. Injunction

The Tax Assessor may, by filing a complaint, apply for an injunction from doing business of any employer required to deduct and withhold tax under this part whenever any such employer fails to deduct and withhold tax under this part; or truthfully account for, or pay over, or make returns of the tax as required by section 5253. The existence of other civil or criminal remedies shall be no defense to this proceeding.

The complaint shall be deemed adequate as to form if it sets forth the name and address of the defendant as stated in his last return filed with the assessor, or, if no such return was filed, the address, if any, known to the assessor; the breach of the law committed by the defendant; and the asses-

sor's prayer for relief. The paragraphs of the complaint shall be numbered. The complaint need not be verified.

The complaint may be presented to the Superior Court in any county where the defendant has a regular place of business, or, if he have no regular place, then in Kennebec County. The court shall forthwith fix a time and place for hearing and cause notice thereof to be given the defendant. The defendant shall serve upon the Tax Assessor a copy of his answer to the complaint at least 3 days before the day of hearing. The answer shall be paraphrased and numbered to conform with the numbering of the paragraphs in the complaint so far as may be. Any allegation of fact in the complaint which is not denied shall be taken as true.

Jurisdiction is granted to the Superior Court to hear and determine such matters, and to enter and change such orders and decrees from time to time as the nature of the case may require and, if necessary, to appoint a receiver. From any final decree of the Superior Court, an appeal lies to the law court. Said appeal shall be heard by the law court in the same manner as in other actions.

Sec. 10. R. S., T. 36, § 5272, sub-§ 1, amended. Subsection 1 of section 5272 of Title 36 of the Revised Statutes, as enacted by section F of chapter 154 of the private and special laws of 1969, is amended to read as follows:

1. **General.** If any amount of tax imposed by this part, including tax withheld by an employer, is not paid on or before the last date prescribed for payment, interest on such amount at the rate of $\frac{1}{2}\%$ ~~per month for each month or fraction thereof~~ shall be paid for the period from such last date to date paid. No interest shall be imposed if the amount of interest due is less than one dollar nor shall this section apply to any failure to pay estimated income tax under section 5230.

Sec. 11. R. S., T. 36, § 5274, sub-§ 3, amended. The first sentence of subsection 3 of section 5274 of Title 36 of the Revised Statutes, as enacted by section F of chapter 154 of the private and special laws of 1969, is amended to read as follows:

If any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of any tax, he shall be deemed to have made an underpayment of estimated tax, and there shall be added to the amount required to be paid under this part a penalty at the rate of $\frac{1}{2}\%$ ~~per month for each month or fraction thereof~~ based on the amount of the underpayment for the period of the underpayment.

Sec. 12. R. S., T. 36, § 5340, sub-§ 5, amended. Subsection 5 of section 5340 of Title 36 of the Revised Statutes, as enacted by section F of chapter 154 of the private and special laws of 1969, is amended to read as follows:

5. **Reports and returns preserved.** Reports and returns required to be filed under this part, ~~or microfilm reproductions of such reports and returns,~~ shall be preserved for 3 years and thereafter until the assessor orders them to be destroyed.

STATEMENT OF FACT

Section 1 of the bill. This is intended to specifically provide payments to sheriffs and their deputies for service and collection of income tax warrants on the same basis as for service and collection of sales and use tax warrants.

Section 2. Since subchapter S corporations having an election in effect are not subject to income taxation as corporations under federal law, the reference to them in subsection 6 of section 5102 is unnecessary.

Section 3. The purpose is to insure continued conformity with the federal income tax law insofar as the State income tax now provides for such conformity.

Section 4. The purpose is to authorize the use of optional tax tables in order to relieve the majority of state income taxpayers of the necessity of mathematical computation of tax liability.

Section 5. The purpose is to treat fishermen in a manner consistent with farmers as to declaration of estimated tax liability, as is the case under the federal income tax. The words "in this State" in subsection 2 of section 5229 are superfluous.

Section 6. Partnerships as such are not subject to income tax; hence partnership returns are information returns only, of minimal value in administering the State income tax. The amendment would preclude the necessity of filing such returns except in circumstances where such returns may in fact be of value.

Section 7. The purpose is to include in the withholding requirements for State income tax purposes only those employers who are required to withhold for federal income tax purposes.

Section 8. The purpose is to make filing dates for state purposes consistent with filing dates for federal purposes; and to require monthly payment of withheld tax where the amount withheld exceeds \$100.

Section 9. The intent of the proposed new section 5255-A of Title 36 is to provide the same injunctive relief against taxpayers who fail to comply with provisions of the income tax law relating to withholding tax as is now available against taxpayers who fail to comply with the sales and use tax law.

Sections 10 and 11. The purpose is to simplify the computation of interest, under subsection 1 of section 5272, and "penalties" (actually interest), under subsection 3 of section 5274, by making it clear that the interest and penalties in question are to be computed on a monthly, rather than daily, basis; and to provide that no interest amounting to less than one dollar will be charged.

Section 12. The purpose is to permit earlier destruction of income tax returns and reports, provided they are microfilmed and the microfilms are retained for at least three years, thereby eliminating the need for space which would otherwise be required for storing such returns and reports.