

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 293

H. P. 220

House of Representatives, January 18, 1973

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

E. LOUISE LINCOLN, Clerk

Presented by Mr. Susi of Pittsfield.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

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. 36, § 5102, sub-§ 3, amended. Subsection 3 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:

3. **Nonresident individual.** "Nonresident individual" shall mean an individual who is not a resident individual of this State.

Sec. 2. R. S., T. 36, § 5102, sub-§ 8, ¶ C, amended. The last paragraph of paragraph C of subsection 8 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of Title 36 of the Revised Statutes, as enacted by section F of chapter 154 of the private and special laws of 1969, is repealed and the following enacted in place thereof:

The fact that 2 or more corporations are affiliated or are directly or indirectly controlled by the same interests does not of itself require the disregarding of corporate entities. Such corporations will be permitted, or required, to file consolidated returns as a group only if the assessor deems a consolidated return necessary to fairly determine net income. Permission to file consolidated returns will not be granted for the purpose of effecting a tax savings.

Sec. 3. R. S., T. 36, § 5102, sub-§ 10, amended. The 2nd sentence of subsection 10 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:

In the case of affiliated corporations under Internal Revenue Code, Section 1504 (a), which file their federal returns on a consolidated basis as a group

and which have made the election provided for in which are permitted or required to file consolidated returns under subsection 8, the group shall be deemed to be the taxable corporation.

Sec. 4. R. S., T. 36, § 5102, sub-§ 11, amended. The 2nd sentence 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 amended by section 129 of chapter 622 of the public laws of 1971, is further 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, ~~1972~~ 1973.

Sec. 5. R. S., T. 36, § 5201, repealed. Section 5201 of Title 36 of the Revised Statutes, as enacted by section F of chapter 154 of the private and special laws of 1969, is repealed.

Sec. 6. R. S., T. 36, § 5231, sub-§ 1, amended. The 2nd sentence of subsection 1 of section 5231 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:

Except for a taxpayer who is outside the United States, no such extension for filing any return, declaration, statement or document shall exceed ~~6~~ 8 months.

Sec. 7. R. S., T. 36, § 5273, sub-§ 1, amended. The first sentence of subsection 1 of section 5273 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:

In case of failure to file any return required under this part on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return **the greater of the following amounts: \$5 or 5% of the amount of such tax if the failure is not for more than one month, with an additional 5% for each additional month or fraction thereof during which such failure continues, not exceeding 25% in the aggregate.**

Sec. 8. R. S., T. 36, § 5274, sub-§ 1, amended. Subsection 1 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:

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

Sec. 9. R. S., T. 36, § 5278, sub-§ 6, additional. Section 5278 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 by adding a new subsection 6, to read as follows:

6. Unclaimed refunds. If a refund of income tax has been determined to be payable, but is not claimed within 3 years of the date of notification by registered or certified mail to the payee at his last known address, the amount of the refund shall revert to the General Fund and neither the payee or any other person shall be entitled to make claim for payment thereafter.

Sec. 10. Effective date. This Act shall be effective as to tax years ending on or after January 1, 1973.

STATEMENT OF FACT

Section 1: This is intended to clarify the definition of "nonresident individual" in the law so that it will be consistent with the definition of "resident individual."

Sections 2 and 3: At present a corporation which is a member of a group filing a consolidated federal income tax return may, as the election of the group, either file a separate return for state purposes, or the group may file a consolidated return, whichever proves to be most advantageous to the corporation in any given year.

The proposed amendments to these sections would eliminate this option on the part of the taxpayer; and would permit or require the filing of a consolidated return only when this is found to be necessary to fairly determine net income of the corporation or corporations subject to Maine tax.

Section 4: This section updates the reference to the Internal Revenue Code in the income tax law, as has been done each year since 1969, to insure continuing conformity with the federal law.

Section 5: The provision for an alternative computation would be repealed since it applies, by its terms, only to corporations as to which the State has no jurisdiction to tax. Thus there is no point in retaining this provision in the law.

Section 6: Under federal law a taxpayer may be given an extension of time for filing up to 6 months. The proposed amendment would make it possible to permit him additional time in which to file his state return, since he cannot prepare his state return until his federal return is completed.

Sections 7 and 8: These sections propose a minimum penalty of \$5 for failure to file a return or to pay tax when due, except where reasonable cause for such failure is shown. Such a penalty would compensate the State, at least in part, for the additional expense occasioned by such failure.

Section 9: This section would provide a limited time within which an unclaimed refund of tax is payable, and would foreclose the right to claim such refund after 3 years from the date notification is given the taxpayer at his last known address by registered or certified mail. While very few refund checks are undeliverable each year, such unclaimed refunds will create a problem over a period of time unless a cut-off date is established.