

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

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Legislative Document

No. 498

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H. P. 394

House of Representatives, February 16, 1977

On motion of Mr. Carey of Waterville, referred to Committee on Taxation.  
Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Carey of Waterville.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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**AN ACT Concerning the Administration of Laws by the Bureau of Taxation.**

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

Sec. 1. 36 MRSA § 6 is enacted to read:

§ 6. Payments; refund or abatement

A taxpayer may pay any tax, make any deposit or file any bond, at any time, without forfeiting any right to apply for a refund or an abatement, or to seek review of the validity of the tax. No such tax, bond or deposit need be paid, filed or made under protest or under duress, to entitle the taxpayer to apply for a refund or an abatement or to seek review of the validity of the tax. This section shall apply to taxes already assessed as well as taxes to be assessed in the future.

Sec. 2. 36 MRSA § 53, 2nd sentence, is repealed.

Sec. 3. 36 MRSA § 54, as last amended by PL 1975, c. 771, § 397, is repealed.

Sec. 4. 36 MRSA § 1332, as repealed by PL 1975, c. 765 and as amended by PL 1975, c. 771, § 403, is repealed.

Sec. 5. 36 MRSA § 1752, sub-§ 2-A is enacted to read:

2-A. Directly. "Directly," when used in relation to production of tangible personal property, refers to those activities or operations which constitute an integral and essential part of production, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to production.

Sec. 6. 36 MRSA § 1752, sub-§ 7-B is enacted to read:

7-B. New machinery and equipment. "New machinery and equipment" means new machinery and equipment and attachments therefor, but excludes repair parts, foundations for new machinery and equipment and special purpose buildings used to house or support new machinery and equipment.

Sec. 7. 36 MRSA § 1752, sub-§ 9-A is enacted to read:

9-A. Primarily. "Primarily," when used in relation to production of tangible personal property, means the use of a unit of property more than 50% of the time directly in production.

Sec. 8. 36 MRSA § 1752, sub-§ 9-B is enacted to read:

9-B. Production. "Production" means an operation or integrated series of operations engaged in as a business or segment of a business which transforms or converts personal property, by physical, chemical or other means into a different form, composition or character from that in which it originally existed.

Production includes manufacturing, processing, assembling and fabricating operations which meet the definitional requisites set forth above upon property intended for ultimate sale or lease.

Production commences with the movement of raw materials to the first production machine after their receipt and storage, if there is storage, otherwise after their receipt and ends with the completion of the finished product, including any packaging operations required for such product. The acquisition of raw materials to be used in production, the transportation of raw materials or goods in process between production sites or their storage, and administrative and distributive operations are not considered as production even though they may be considered essential to production.

Sec. 9. 36 MRSA § 1752, sub-§ 11, 5th sentence, as repealed and replaced by PL 1975, c. 765, § 19 and as amended by PL 1975, c. 779, is repealed and the following enacted in its place:

"Retail sale" and "sale at retail" do not include the sale of tangible personal property which becomes an ingredient or component part of, or which is consumed or destroyed or loses its identity in the manufacture of, tangible personal property for later sale or lease, other than lease for use in this State, but shall include fuel and electricity but shall not include electricity separately metered and consumed in any electrolytic process for the manufacture of tangible personal property for later sale, nor any fuel oil, the by-products from the burning of which become an ingredient or component part of tangible personal property for later sale.

Sec. 10. 36 MRSA § 1760, sub-§ 3, last ¶, last sentence, is amended to read: Meals, food and drink served to patients and inmates of hospitals licensed by the State for the care of human beings and other institutions licensed by the State for the hospitalization or nursing care of human beings, or institutions, agencies, hospitals, boarding homes and boarding houses licensed by

the Department of ~~Health and Welfare~~ **Human Services** under Title 22, ~~sections 5 and 3797~~ subtitle 6, and Title 34, section 2211, shall be deemed "food products."

**Sec. 11.** 36 MRSA § 1760, sub-§ 31, as last amended by PL 1973, c. 794, is repealed and the following enacted in its place:

31. **New machinery and equipment.** Sales of new machinery and equipment for use by the purchaser directly and primarily in the production of tangible personal property for ultimate sale or lease;

**Sec. 12.** 36 MRSA § 2908, 1st sentence, as last amended by PL 1971, c. 529, § 5, is further amended to read:

Any person, association of persons, firm or corporation who shall buy and use any internal combustion engine fuel as defined in this chapter for the purpose of operating or propelling commercial motor boats, tractors used for agricultural purposes not operating on public ways, or in such vehicles as run only on rails or tracks, or in stationary engines, or in the mechanical or industrial arts, or for any other commercial use except in motor vehicles operated or intended to be operated upon any of the public highways of this State, or turnpikes operated and maintained by the Maine Turnpike Authority, or except as provided in ~~sections section 2910 and 2911~~, in the operation of aircraft, and who shall have paid any tax on internal combustion engine fuel levied or directed to be paid as provided by this chapter, either directly by the collection of such tax by the vendor from such consumer, or indirectly by adding the amount of such tax to the price of such fuel and paid by such consumer, shall be reimbursed and repaid to the extent of 8/9 of the amount of such tax paid by him upon presenting to the State Tax Assessor a sworn statement accompanied by the original invoices showing such purchases, which statement shall show the total amount of such fuel so purchased and used by such consumer other than in motor vehicles operated or intended to be operated upon any of the public highways of the State and in the operation of aircraft.

**Sec. 13.** 36 MRSA § 4365, 2nd sentence, as enacted by PL 1973, c. 768, § 2 and as amended by PL 1975, c. 623, § 60, is repealed.

**Sec. 14.** 36 MRSA § 4365, 3rd sentence, as enacted by PL 1973, c. 768, § 2, is repealed.

**Sec. 15.** 36 MRSA § 5102, sub-§ 11, last 2 sentences, as last repealed and replaced by PL 1975, c. 765, § 25, are amended to read:

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 December 31, ~~1975~~ 1976. This subsection shall be effective as to items of income, deductions, loss or gain accruing in taxable years ending on or after January 1, ~~1975~~ 1976 but only to the extent such items have been earned, received, incurred or accrued on or after such effective date.

**Sec. 16. 36 MRSA § 5253, 2nd sentence**, as last amended by PL 1971, c. 61, § 9, is further amended to read:

Where the aggregate amount required to be deducted and withheld by any employer for a calendar month exceeds \$100, the employer shall by the last day of the succeeding month file a withholding return as prescribed by the assessor and pay over such aggregate amount to the assessor or to a depository designated by the assessor.

**Sec. 17. 36 MRSA § 5253, 3rd sentence**, as enacted by P & SL 1969, c. 154, Sec. F, is repealed.

**Sec. 18. 36 MRSA § 5313, last sentence**, as last repealed and replaced by PL 1975, c. 474, § 2, is amended to read:

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 appropriate office a copy of said notice and from the time of such filing the lien shall be extended for 5 years, unless sooner released or otherwise discharged.

#### STATEMENT OF FACT

The specific purposes of the administrative modification proposed by this bill are set forth by section numbers of this bill.

Section 1 is designed to legislatively overrule the decision of the Maine Supreme Judicial Court, in *Exxon Corp. v King*, 351 A.2d 534 (1976).

Section 2 eliminates the necessity of the State Tax Assessor biennially incorporating his investigation and examination of systems and methods of taxation in other states in a report to the Legislature.

Section 3 eliminates the necessity of the State Tax Assessor making an annual report of the proceedings of the Bureau of Taxation to the Governor and now nonexistent Governor's Council.

Section 4 repeals a duplication of the State Tax Assessor's abatement authority.

Sections 5 thru 8 incorporate by statutory definition administrative rulings and interpretations of the new machinery and equipment exemption in the Sales Tax Law for purposes of clarifying the exemption.

Section 9 sets forth the latter of 2 definitions of "retail sale" effective the same date enacted by the 107th Legislature.

Section 10 eliminates a reference to statutory provisions which have been repealed and replaces them with appropriate reference.

Section 11 changes the new machinery and equipment exemption by using the newly defined terms in sections 5 thru 8 without changing the scope of the exemption.

Section 12 eliminates a reference to a repealed section.

Sections 13 and 14 repeal language without content because of the repeal of Title 22, section 3454 by PL 1975, c. 623, § 31.

Section 15 is the annual updating of the State of Maine Income Tax Law to reflect changes in provisions of the Internal Revenue Code since the last updating.

Section 16 requires employees withholding in excess of \$100 a month to file withholding returns as prescribed by the State Tax Assessor.

Section 17 repeals the reference to a credit on the employer's quarterly return when he withholds in excess of \$100 a month as section 48 provides that the employer file as prescribed by the State Tax Assessor.

Section 18 provides for extension of an income tax lien by filing a copy of the notice of the lien in the office where the notice of the lien was originally filed.