

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 942

H. P. 729

House of Representatives, March 9, 1977

On motion of Mrs. Post of Owls Head, referred to the Committee on Taxation. Sent up for concurrence and 1,800 copies ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Davies of Orono.

Cosponsor: Mrs. Post of Owls Head.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

**AN ACT to Discourage Land Speculation by Imposition of a Tax on Gains
from the Sale of Land.**

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

Sec. 1. 36 MRSA c. 114 is enacted to read:

CHAPTER 114

TAX ON GAINS FROM THE SALE OR EXCHANGE
OF LAND

§ 1561. Tax imposed

There is imposed, in addition to all other taxes imposed by this Title, a tax on the gains from the sale or exchange of land in Maine. The Land Gains Tax is a transfer tax for the purpose of the Federal Income Tax and is therefore a selling expense.

§ 1562. Land and residences

1. Land. "Land" means all lands in the State, whether or not improved, including the water power, shore privileges and rights, forests and mineral deposits appertaining thereto but for the purpose of this chapter "land" does not include:

A. Buildings and other structures;

B. Land, not exceeding one acre, necessary for the use of a dwelling used by the taxpayer as his principal residence;

C. Land, not exceeding one acre, necessary for the use of a dwelling which is to be used as the purchaser's principal residence. As used in this section "purchaser's principal residence" means the principal dwelling of a person who is or will be domiciled in the State of Maine. This exclusion from the definition of land shall not apply unless the purchaser first executes, upon a form supplied by the State Tax Assessor, a certification that he is domiciled in Maine or will be within 60 days, that the dwelling to be purchased will be used as his principal residence, and that he understands that as a Maine domiciliary all of his income is subject to the jurisdiction of Maine income tax laws;

D. Land, not exceeding one acre, upon which there is no dwelling or a dwelling not completed and fit for occupancy as a purchaser's principal residence, yet upon which it is the intention of the purchaser to construct his principal residence. This exclusion from the definition of land shall not apply unless:

(1) The purchaser shall certify, upon a form provided by the State Tax Assessor, that construction or repair of the dwelling will be commenced within one year of the date of transfer of title to the land and that it will be completed and occupied by the purchaser within 2 years from the date of such transfer;

(2) The purchaser shall execute upon a form provided by the State Tax Assessor, a certification that upon completion of the construction or repairs, he will be a domiciliary of Maine, that the dwelling will be used as his principal residence and that he understands that as a Maine domiciliary all of his income is subject to the jurisdiction of Maine income tax laws;

(3) The deed or other transfer instrument shall be accompanied by a statement, upon a form provided by the State Tax Assessor, declaring the amount of tax of which the transferor has been relieved by virtue of the purchaser's certifications and that this amount is a lien running with the land in favor of the State of Maine until either the amount of such tax has been paid or the purchaser has filed upon a form provided by the State Tax Assessor a statement under penalties of perjury that the dwelling was constructed and occupied within the terms and conditions of this section;

E. Land owned by the State, a county or a municipality or any agency or quasi-independent agency of the State, a county or municipality; or

F. The percentage of a multiple-use building that is used as a principal residence provided that other terms and conditions of this section have been complied with.

2. Untrue certifications. In cases where the State Tax Assessor determines that any of the certifications prescribed by this section are untrue, the transferor shall collect from the buyer the tax upon the profit allocable to the wrongfully exempted land.

§ 1563. Deeds

1. Statement. Each deed or other instrument of transfer when offered for recording shall be accompanied by a statement prepared in duplicate and signed, subject to the penalties of perjury, by the parties to the transactions or their authorized representative, declaring separately the consideration for and the value of the land thereby transferred and the consideration for and the value of any improvements upon the land transferred. If the transfer is not subject to the Land Gains Tax, the reason therefor shall be stated.

2. Form of statement. The statement shall be in the form prescribed by the State Tax Assessor, who shall provide an adequate supply of such forms to each register of deeds in the State.

§ 1564. Rate of tax

The tax imposed by section 1561 shall be based upon the years held at the following rates on the gain, as gain is determined under section 1566:

Years land held by transferor	*Gain, as a percentage of basis (tax cost)		
	0-99%	100-199%	200% or more
Less than 1 year	30%	45%	60%
1 year, but less than 2	25%	37.5%	50%
2 years, but less than 3	20%	30%	40%
3 years, but less than 4	15%	22.5%	30%
4 years, but less than 5	10%	15%	20%
5 years, but less than 6	5%	7.5%	10%

*Gain, as percent of basis, shall be rounded to the next highest whole percentage.

§ 1565. Sale or exchange

1. Sale or exchange of land. As used in this chapter "sale or exchange of land" shall mean any transfer of title to land for a consideration. The transfer of an option for the sale or exchange of land shall be considered a transfer of title to land for the purposes of this chapter.

2. Contracts for sale of land. Contracts for the sale of land constitute sales or exchanges of land for all purposes of this chapter. However, contracts shall not constitute sales or exchanges until some consideration has passed thereunder to or for the benefit of the seller or exchanger. The sale or exchange is considered to take place at the time any consideration whatsoever, of whatever nature, first passes under the contract. A mere promise to purchase, and amounts paid as earnest money, or amounts paid in deposit or amounts paid in escrow to which the seller has no immediate right, do not constitute the passing of consideration for the purposes of this chapter.

3. Sale or exchange of shares. Any sale or exchange of shares in a corporation or other entity, or of comparable rights or property interests in

any other form of organization or legal entity, which effectively entitles the purchaser to the use or occupancy of land constitutes a sale or exchange of land.

§ 1566. Basis, gain and holding

1. Tax cost. The provisions of the Federal Internal Revenue Code shall determine the basis, tax cost, of land sold or exchanged.

2. Amount realized is full actual consideration therefor. The amount realized from the sale or exchange shall be the full actual consideration therefor, paid or to be paid, including the amount of any liens or encumbrances on the land existing before the sale or exchange and not removed thereby. The amount realized from the sale or exchange shall be the gross amount thereof, reduced by any expenses of sale and commissions. In the event that a sale includes land and buildings or other structures, the amount realized shall be allocated between the land and the buildings or other structures on the basis of fair market value. In the case of a condominium unit, the individual land interest shall be subject to the tax providing there is a gain on the sale.

3. Taxable gain. The taxable gain from the sale or exchange is the amount realized minus the basis, tax cost, of the land as determined under subsection 1. No gain shall be recognized in cases where gain is not recognized under the Federal Internal Revenue Code, as amended, in relation to the sale or exchange of capital assets.

4. Land held or exchanged. The land sold or exchanged shall be deemed to have been held as determined under the Federal Internal Revenue Code. However, as to any person whose holding period is claimed by the seller or exchanger, such holding period shall not exceed the time for which such person has had actual and recorded title thereto in his name, and shall include the time the land was so held prior to the effective date of this chapter. If a husband and wife are joint tenants, there may be added to the holding period the amount of time the land was held by one spouse alone before that spouse created the joint tenancy. Notwithstanding any provision to the contrary under the Federal Internal Revenue Code, if a joint tenancy is dissolved by reason of death, the holding period during the joint tenancy shall be added to the holding period of the surviving spouse owning the property in his own name. In the case of a gift, the holding period of the donee shall include the time that actual and recorded title was held by the donor.

5. Taxable gain not reduced by losses. The taxable gain under this chapter from the sale or exchange of land shall not be reduced by any losses incurred in other transactions.

§ 1567. Liability for the tax

The person liable for the tax is the transferor, which includes the owner, seller or other exchanger of the land sold or exchanged.

§ 1568. Withholding at the source

1. Buyer liable. The buyer or transferee of any land held by the seller or transferor for less than 6 years shall withhold and is liable for 10% of all consideration paid to the seller or transferor for such land, including 10% of all partial payments made pursuant to installment sales under section 1570. At the time any payment is made to the seller or transferor, the amounts withheld shall be remitted to the State Tax Assessor. The buyer is also liable for the Land Gains Tax itself in the event he fails to comply with the conditions for exemption represented to the seller under section 1561.

2. Return filed. Within 30 days of the sale or exchange of land, for which withholding is required under this section, the seller or transferor shall file a return with the State Tax Assessor setting forth the amount of the tax due pursuant to section 1564 and the amount withheld by the buyer or transferee pursuant to subsection 1. The seller shall either remit with the return the balance of the tax due or make claim for a refund. Any refund not made by the State Tax Assessor within 15 days of receipt by him of a valid claim shall accrue interest at the rate of $\frac{1}{2}$ of 1% per month. For good cause shown and upon conditions set by him, the State Tax Assessor may extend the time for filing the return and paying the tax required by this chapter.

3. Tax paid in advance of sale. Notwithstanding either subsection 1 or subsection 2, the seller or transferor may, in advance of the sale or exchange, pay the tax imposed by this chapter or obtain a written ruling from the State Tax Assessor that no tax is due under this chapter. In either case, the State Tax Assessor shall certify to the seller or transferor that such payment has been made or that no tax is due. Upon receipt by the buyer or transferee of such certification from the seller or transferor, the buyer or transferee shall not be required to withhold under subsection 1.

4. Personal debt. All taxes required to be paid or withheld under this chapter shall constitute a personal debt of the person liable to pay or withhold the same to the State, to be recovered in an action under this chapter.

5. Action to recover taxes. An action may be brought to recover the amount of the taxes to be paid or withheld in the manner prescribed for recovering amounts owed for taxes under chapter 105.

The amount of taxes to be paid or withheld shall be a lien in favor of the State upon all property and rights to property, whether real or personal, belonging to the person liable for the tax or for the withholding. This lien shall be enforced in the manner prescribed in chapter 105.

§ 1569. Transfers not subject to the tax

1. Transfers not subject to tax. Transfers not subject to the tax include:

A. Gifts, transfers by reason of death, distributions as opposed to sales or satisfaction of a cash legacy with land from estates, transfers merely to correct deeds, and straw transfers where there is a transfer of title but there is no consideration;

B. Leases;

- C. The sale of mineral rights or timber rights for a limited period of time;
- D. Sales of gravel, soil, cut timber and similar items;
- E. Sales by the United States or its instrumentalities; or
- F. Foreclosures or voluntary conveyances, except where there is gain to the seller or mortgagor.

§ 1570. Installment sales

1. **Definition.** For the purpose of this section, "installment sale" means sale or exchange of land as defined in section 1565 for which the total tax due under this chapter is greater than \$2,400 and in which the parties agree in advance that payments shall be received by the seller or transferor in more than one installment on a date or dates other than the date of closing. A sale financed by a mortgage, deed of trust or other financing arrangement in which the seller or transferor is paid in full on the date of the sale or exchange shall not be considered an installment sale. A lease-purchase agreement under which any part of the rental payments constitutes a portion of the purchase price of the land shall be considered an installment sale, and for the purposes of this chapter the end of the holding period with respect to the sale or exchange shall be determined as of the date of the agreement.

2. **Tax due within 30 days.** Notwithstanding any provision of law to the contrary, the tax under this chapter on any installment sale shall be due within 30 days of the date of payment of each installment paid to the seller or transferor.

3. **Amount due under installment sale.** In an installment sale, the total amount of taxes due under this chapter shall be the amount that would have been due had the total purchase price been paid on the date the sale or exchange took place. The amount of taxes due on each separate installment, including the first installment, shall bear the same proportion to the total amount of taxes due as the amount of that installment bears to the total consideration.

§ 1571. Administration of the tax

1. **State Tax Assessor to administer this chapter.** The State Tax Assessor shall administer and enforce this chapter and this tax. He may issue, amend and withdraw from time to time, reasonable regulations to assist such administration and enforcement.

2. **Administrative provisions applicable.** All the administrative provisions of chapters 801 to 839 shall apply to the tax imposed by this chapter unless this chapter provides otherwise.

§ 1572. Criminal penalties

1. **Penalty.** Any person who willfully defeats or evades or attempts to defeat or evade the tax imposed by this chapter shall, upon conviction, be punished by a fine of not more than \$10,000 or 5 times the amount of the tax defeated or evaded or attempted to be defeated or evaded, whichever is

larger, or by imprisonment for not more than one year, or by both fine and imprisonment. A corporation or other taxable entity not being a natural person shall be subject to the fine provided by this section.

2. Other persons subject to penalty. Any officer, employee, director, trustee or other responsible person of a corporation or other taxable entity, and any other person who counsels, aids, abets, participates in or conceals the defeat or evasion of tax, or the attempt thereat, shall be subject to the penalties of subsection 1.

3. Form for payment of tax. The form for the payment of the tax under this chapter shall set forth in large type the penalties provided by this section.

Sec. 2. Appropriation. There is appropriated from the General Fund to the Department of Finance and Administration, Bureau of Taxation, the sum of \$158,120 to carry out the purposes of this Act. The breakdown shall be as follows:

	1977-78		1978-79
FINANCE AND ADMINISTRATION, DEPARTMENT OF			
Bureau of Taxation			
Personal Services	(7) \$47,685	(7)	\$66,310
All Other	20,000		20,000
Capital Expenditures	4,125		—
	\$71,810		\$86,310

FISCAL NOTE

If this bill is effective in its entirety on June 1, 1977, it is projected it would result in an increase in income to the General Fund of \$1,300,000 for fiscal years 1977 and 1978.

STATEMENT OF FACT

The purpose of this bill is to impose a tax on the gains from the sale or exchange of land in Maine and thereby dampen speculation in Maine real estate.

Exempted from this tax would be land of up to an acre which is necessary for the use of the seller's principal residence.

The tax would be assessed on a sliding scale with the greatest tax being paid if the seller had held the land for only one year or less and the least tax being paid if the seller had held the land for between 5 and 6 years. Any land held for more than 6 years would not be taxed on the gain from any transfer.