

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 2130

H. P. 2070

House of Representatives, January 31, 1978

Governor's Bill. The Committee on Taxation suggested by Committee on Reference of Bills.

EDWIN H. PERT, Clerk

Presented by Mrs. Post of Owls Head.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

AN ACT to Establish Standard Interest and Penalty Provisions for the Tax Laws.

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

Sec. 1. 36 MRSA c. 7 is enacted to read:

CHAPTER 7

UNIFORM ADMINISTRATIVE PROVISIONS

§ 186. Interest

Any person who fails to pay any tax imposed under this Title on or before the last date prescribed for payment shall be liable for interest on the tax, calculated from that date, at the rate of $\frac{3}{4}\%$ for each month or fraction thereof that the tax remains unpaid. For purposes of this section, the last date prescribed for payment of tax shall be determined without regard to any extension of time permitted for filing a return. In addition, any tax, interest or penalty imposed by this Title which has been erroneously refunded and which is recoverable by the State Tax Assessor shall bear interest at that rate from the date of payment of the refund. All that interest shall be recoverable by the State Tax Assessor in the same manner as if it were a tax imposed under this Title. If the failure to pay a tax when required is

explained to the satisfaction of the State Tax Assessor, he may abate or waive the payment of all or any part of that interest.

§ 187. Penalties

1. Failure to file return. Any person who fails to make and file any return required under this Title at or before the time the return becomes due shall be liable for a penalty of \$5 or 5% of the tax due, whichever is greater, for each month or fraction thereof during which the failure continues, provided that the penalty shall not exceed, in the aggregate, \$25 or 25% of the tax due, whichever is greater.

2. False return. Any person who files a return under this Title which is materially incorrect shall be liable for a penalty. If the return is materially incorrect because of negligence or intentional disregard of this Title or of any ruling, rule or regulation of the State Tax Assessor issued pursuant to this Title, without intent to defraud, the penalty shall be in an amount of \$10 or 10% of the deficiency, whichever is greater. If the return is materially incorrect because of fraud with intent to evade the tax, the penalty shall be in the amount of \$50 or 50% of the deficiency, whichever is greater.

3. Failure to pay. Any person who fails to pay any tax due under this Title in the amount shown on the return of that tax as filed by that person or in that amount as may be determined and assessed against that person by the State Tax Assessor shall be liable for a penalty of \$5 or 5% of the tax due, whichever is greater, for each month or fraction thereof during which the failure continues, provided that the penalty shall not exceed, in the aggregate, \$25 or 25% of the tax due, whichever is greater.

4. Insufficient funds check. Any person who makes payment of an amount due under this Title by means of a check, if the check is returned unpaid by the bank on which it is drawn because of insufficient funds or the closing or nonexistence of the account on which it is drawn, shall be liable for a penalty of \$10 or 1% of the check amount, whichever is greater.

5. Generally. Each penalty provided by this section shall be in addition to any interest and other penalties provided by this section and other law, but interest shall not accrue on the penalty. This section shall not apply to any filing or payment responsibility pursuant to Part 2. Each penalty shall be recoverable by the State Tax Assessor in the same manner as if it were a tax imposed under this Title. For cause, the State Tax Assessor may waive or abate all or any part of any penalty imposed by this section. For purposes of this section, the term "person" includes an individual, corporation, or partnership or any officer or employee of a corporation, including a dissolved corporation, or a member or employee of a

partnership who, as the officer, employee or member, is under a duty to perform the act in respect of which the violation occurs.

Sec. 2. 36 MRSA § 1145, last 2 sentences, as amended by PL 1971, c. 616, § 14, are repealed and the following enacted in their place:

The real estate is held to the State for payment of those taxes on October 1st.

Sec. 3. 36 MRSA § 1232, 2nd sentence, as amended by PL 1973, c. 625, § 253, is repealed as follows:

~~Interest on such state taxes shall be charged at the rate of 6% per year after the first day of October following the date of the assessment.~~

Sec. 4. 36 MRSA § 1281, next to last sentence is repealed as follows:

~~Interest shall accrue on the unpaid balance of tax secured by such mortgage, at the rate of 6% per year.~~

Sec. 5. 36 MRSA § 1541, as amended by PL 1973, c. 625, § 259, is repealed and the following enacted in its place:

§ 1541. Public reserved lots held for payment of taxes

The timber and grass on the public reserved lots shall be held to the State for the payment of those state taxes which may be lawfully assessed against them.

Sec. 6. 36 MRSA § 1543, last sentence is amended to read:

Any owner may redeem his interest in such public reserved lots by tendering to the State Tax Assessor, within one year after the date of the forfeiture, his proportional part of all the sums due on such lots, ~~together with interest at 6% a year from the date of the forfeiture,~~ and \$1 for a release.

Sec. 7. 36 MRSA § 1952, first ¶, last 3 sentences are repealed and the following enacted in their place:

For cause, the State Tax Assessor may abate all or any part of the taxes.

Sec. 8. 36 MRSA § 2112 is repealed.

Sec. 9. 36 MRSA § 2352, first ¶, last sentence, as amended by PL 1973, c. 788, § 189, is further amended to read:

If any corporation, company, association or person fails to pay the taxes required or imposed by sections 2623 and 2683, the State Tax Assessor shall forthwith commence a civil action in the name of the State, for the recovery of the same with interest ~~at the rate of 10% a year and penalties.~~

Sec. 10. 36 MRSA § 2352, last ¶ is amended to read:

In addition to other remedies for the collection of state taxes upon any corporation, such taxes with interest at the rate of 10% a year and penalties may be recovered by a civil action in the name of the State.

Sec. 11. 36 MRSA § 2521-A, 2nd ¶, last 2 sentences and the 3rd ¶, as repealed and replaced by PL 1975, c. 377, are repealed as follows:

~~Any insurance company, association or attorney in fact of a reciprocal insurer who neglects to make returns or pay the amount of tax shown due shall be liable to a penalty of \$5 a day for each day in arrears or 1/2 of 1% of tax liability, whichever is greater, together with interest at the rate of 1% per month or fraction thereof due on demand by the State Tax Assessor, and recoverable in a civil action. The State Tax Assessor may waive penalty for cause.~~

~~Any insurance company, association or attorney in fact of a reciprocal insurer which elects to pay estimated tax on the preceding year's liability but fails to pay such amount for the quarter shall be liable to a penalty of 25% of the understated amount. Any insurance company, association or attorney in fact of a reciprocal insurer which elects to pay tax on the current year basis who at the time of filing the final return understated reported liability by more than 20% shall be liable to a penalty of 25% of such understated liability. The foregoing penalties shall be due on demand by the State Tax Assessor, who may waive penalty for cause, and such penalties shall be recoverable in a civil action.~~

Sec. 12. 36 MRSA § 2622 is repealed.

Sec. 13. 36 MRSA § 2628, last sentence is repealed as follows:

~~Any railroad corporation, association or person operating any railroad in the State, which refuses or neglects to make returns required by law or to exhibit to the Public Utilities Commission its books for the purposes aforesaid, or makes returns which the president, clerk, treasurer or other person certifying to such returns knows to be false forfeits not less than \$1,000 nor more than \$10,000, to be recovered by indictment or by a civil action in any county into which the railroad operated extends.~~

Sec. 14. 36 MRSA § 2686, 3rd sentence, as repealed and replaced by PL 1973, c. 717, § 3, is repealed as follows:

~~Any corporation, association or person who at the time of filing its reconciliation return understated its reported liability by more than 20% shall be liable to a penalty of 25% of such understated liability due on demand by the State Tax Assessor and recoverable in a civil action.~~

Sec. 15. 36 MRSA § 2687, as repealed and replaced by PL 1973, c. 717, § 4, is repealed.

Sec. 16. 36 MRSA § 2906, 5th sentence, as amended by PL 1975, c. 11, § 1, is repealed as follows:

~~If such report is not filed by the last day of the month such certificate holder shall be liable to a penalty of \$5 a day for each day in arrears, or ½ of 1% of tax liability, whichever is greater.~~

Sec. 17. 36 MRSA § 2906, 6th sentence, as enacted by PL 1975, c. 11, § 1, is repealed as follows:

~~If tax is not paid when due, interest shall accrue on such unpaid tax at the rate of ½ of 1% per month or fraction thereof.~~

Sec. 18. 36 MRSA § 2906, 7th sentence, as amended by PL 1975, c. 11, § 1, is repealed as follows:

~~Such penalty and interest shall be due on demand by the State Tax Assessor and recoverable in a civil action.~~

Sec. 19. 36 MRSA § 2906, 8th sentence is repealed as follows:

~~The State Tax Assessor may waive penalties for cause.~~

Sec. 20. 36 MRSA § 2906, 9th sentence is amended to read:

Each certificate holder shall, within 15 days after demand made upon him by the State Tax Assessor, pay a tax of 9¢ per gallon upon each gallon of such fuel upon which the tax has not been paid, together with interest ~~at the rate of ½% per month or fraction thereof and penalties~~, which upon an audit the State Tax Assessor may find to have been received into the State during ~~all or any part of~~ the preceding 2 calendar years by the certificate holder and not properly accounted for in a report or in accordance with law, provided such demand is made within one year of the close of the period covered by such audit.

Sec. 21. 36 MRSA § 2906, 10th sentence is repealed as follows:

~~A licensed exporter shall be liable for tax plus penalty of 25% of tax for any fuel purchased tax free for export but not in fact exported from this State.~~

Sec. 22. 36 MRSA § 3030, as last amended by PL 1973, c. 7, § 6, is repealed.

Sec. 23. 36 MRSA § 3035, 3rd ¶, last sentence, as amended by PL 1973, c. 7, § 7, is repealed as follows:

~~If such report is not filed or such payment is not rendered by the last day of the month such dealer shall be liable to interest at the rate of ½% per month or~~

~~fraction thereof together with a penalty of \$1 a day for each day in arrears or 10% of tax liability, whichever is greater, due on demand by the State Tax Assessor and recoverable in a civil action.~~

Sec. 24. 36 MRSA § 3035, 4th ¶, last sentence, as enacted by PL 1973, c. 7, § 8, is repealed as follows:

~~The tax so assessed shall bear interest at the rate of ½% per month or fraction thereof, and a penalty of 10% shall be imposed for negligent failure to pay tax when due.~~

Sec. 25. 36 MRSA § 3683 is repealed.

Sec. 26. 36 MRSA § 3742, 2nd sentence is repealed as follows:

~~If the tax is not paid when due, interest at the rate of 10% annually shall be charged and collected from the time the same became due.~~

Sec. 27. 36 MRSA § 4310, first sentence is repealed as follows:

~~Any processor or shipper of blueberries, who shall make any false or fraudulent report or return required by this chapter, or who shall evade or violate any of the provisions of such chapter, shall be punished by a fine of not more than \$50 per ton of fresh blueberries involved or fraction thereof.~~

Sec. 28. 36 MRSA § 4512, first sentence is repealed as follows:

~~Any handler of milk who shall make any false or fraudulent report or return required by this chapter, or who shall evade or violate any of the provisions of this chapter, shall be punished by a fine of not more than \$500.~~

Sec. 29. 36 MRSA § 4531, first sentence, as enacted by PL 1975, c. 444, § 6, is repealed as follows:

~~Any dealer of milk who shall make any false or fraudulent report or return required by this chapter, or who shall evade or violate any of the provisions of this chapter, shall be punished by a fine of not more than \$500.~~

Sec. 30. 36 MRSA § 4572, first sentence is repealed as follows:

~~Any shipper of potatoes, as defined in section 4562, who shall make any false or fraudulent report or return required by this chapter, or who shall evade or violate any of the provisions of this chapter, shall be punished by a fine of not more than \$500.~~

Sec. 31. 36 MRSA § 4638, as amended by PL 1973, c. 513, § 22, is repealed and the following enacted in its place:

§ 4638. False returns; violations

The wholesale seafood dealer's and processor's license and resident or nonresident interstate shellfish transportation license of any shellfish dealer who is liable for penalties under chapter 7 shall be suspended by the Commissioner of Marine Resources until the penalties and the related tax are paid in full. Whenever any shellfish dealer shall fail to pay any tax due under this chapter within the time limited, the Attorney General shall enforce payment of that tax by civil action against the shellfish dealer for the amount of that tax in either the Superior Court in Kennebec County or in the District Court in the division in which the shellfish dealer has his residence or established place of business.

Sec. 32. 36 MRSA § 4641-E, last sentence, as enacted by PL 1975, c. 572, § 1, is amended to read:

If he shall determine there is a deficiency of taxes due under this chapter, he shall assess such deficiency, together with interest at the rate of 9% per year from the date of recording and penalties, giving notice to the persons liable, but no such assessment can be made more than 2 years after the date of recording.

Sec. 33. 36 MRSA § 4700, first sentence, as amended by PL 1973, c. 513, § 22, is repealed and the following enacted in its place:

The wholesale seafood dealer's and processor's license, state license to pack sardines and packer's certificate of any packer, who is liable for penalties under chapter 7, shall be suspended by the Commissioner of Marine Resources, Commissioner of Agriculture and State Tax Assessor, respectively, until the penalties and the related tax are paid in full.

Sec. 34. 36 MRSA §§ 5272 to 5274, as enacted by P&SL 1969, c. 154, § F and as amended, are repealed.

Fiscal Note

It is estimated that this bill will improve cash flow and produce additional general fund revenue of up to \$200,000.

STATEMENT OF FACT

This bill is intended to replace the present interest and penalty provisions of the tax laws, which vary greatly, with interest and penalty standards which will apply uniformly to all state taxes. The interest provision will also apply to property taxes in the unorganized territory. Enactment would facilitate administration of the tax laws and clarify taxpayer responsibility.