

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 1130**

H. P. 954

House of Representatives, March 5, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Lewis of Auburn.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

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**AN ACT to Permit the Taxation of Certain Athletic Property Owned by Tax-exempt Organizations.**

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

36 MRSA § 652, sub-§ 2 is enacted to read:

**2. Athletic property. Athletic property owned by an institution or organization, otherwise exempt from taxation under this section, is subject to taxation under the following provisions.**

**A. As used in this subsection, the following terms have the following meanings.**

**(1) "Athletic property" means real or tangible personal property or a portion of property, whether indoors or out-of-doors, which an organization owns and which is designed for and primarily used for the purpose of sports, physical fitness or a similar activity involving the exercise of physical skill, agility or stamina.**

**(2) "Basic public need" includes, but is not limited to, access of the general public to athletic property for a charge which does not exceed the direct expense incurred in conducting the activity, or access to athletic property where a similar facility, activity or property is not otherwise available to the general public. For the purpose of this definition, advertising is not a direct expense.**

(3) "Commercial activity" means any activity in which an organizational direct user engages which does not further a charitable purpose, nor serve a basic public need.

(4) "Direct user" means a person, including an organization, who uses, or has immediate managerial control over a person who uses, athletic property.

(5) "Taxpayer" means a person, including a corporation or trust, who owns athletic property which is subject to taxation.

**B. Athletic property is taxable if the organization or another direct user of the property utilizes the property during the organization's fiscal year for other than a literary, educational, temperance, benevolent, charitable or scientific purpose, or other than to serve a basic public need, where the noncharitable use is in direct competition with a person, including a business enterprise, engaged in the same activity and subject to the property tax imposed by this chapter. An athletic property is taxable in a circumstance where there is a competitive commercial use of the property for part of the organization's fiscal year. In such a case, the tax imposed shall bear the same proportion to the tax which would be applicable to the property if it were taxable for the entire taxable year, as the time during the organization's fiscal year for which the organization allows use of the property in a nonexempt manner bears to the total time that the athletic property is normally available for use during the organization's fiscal year.**

**C. The presence of one or more of the following conditions qualifies an athletic property for a tax exemption under this section.**

(1) Where the owner, or other direct user, of an athletic property does not receive more than \$2,000 in gross revenue from the use of the athletic property during the owner's fiscal year, the property is exempt from taxation.

(2) Athletic property which is otherwise exempt from taxation is exempt from the property tax if the activity on the property is not in direct competition with a taxpayer in the same general area conducting a similar commercial activity. If there is no similar commercial activity within 20 miles of the activity on the athletic property of the charitable organization, there is a presumption that the activity on the property is not in direct competition with a taxpayer engaging in similar commercial activity within the general area. The burden of overcoming the presumption of non-competition rests with the challenger to the exemption. If there is similar commercial activity within 20 miles of the activity on the athletic property of the charitable organization, there is a presumption that the activity on the athletic property of the organization is in direct competition with a similar commercial activity in which a taxpayer's private enterprise engages. The burden of overcoming the presumption of direct competition rests with the organization seeking the exemption. The activity on the athletic property is not in direct competition with a taxpayer unless the organizational owner or

direct user provides a facility, activity or property which is similar to that of a taxpayer in the same general area.

(3) Where a charitable organization, whether or not it is the owner of the property, is the direct user of athletic property, the property is exempt from the property tax if, at all times at which the property is available for use, a charitable organization uses it to further a charitable purpose or to serve a basic public need. An example of that use is the use of a college's athletic property by an alumni organization in connection with normal alumni activities.

(4) Where a charitable organization which owns athletic property allows the general public to use the property in order to serve a basic public need, the athletic property is exempt from taxation.

(5) Where a charitable organization organized for the primary purpose of providing athletic facilities at low charge to the general public is the owner or other direct user of the athletic property, the property is exempt from taxation when so used.

D. In order to consider whether a particular athletic property of a charitable organization is exempt from taxation, the board of assessors shall obtain at least the following information:

(1) An indication of whether the charitable organization is the exclusive direct user;

(2) The name of each direct user, if the charitable organization is not the exclusive direct user;

(3) A description of the activity which each direct user, including the charitable organization, conducts on that property;

(4) A description of the degree to which each direct user controls the management and operation of the activity and the manner in which each direct user manages and conducts the activity which occurs on that athletic property;

(5) A description of any rental or leasing agreement between the owner and the direct user;

(6) The amount of receipts from and expenditures for each athletic property for which the charitable organization seeks a tax exemption; or

(7) A copy of the federal tax return reporting unrelated business income taxable under the United States Internal Revenue Code, Section 511.

E. The following facts provide a basis for a determination that an athletic property of a charitable organization is taxable.

(1) A taxpayer conducts a commercial activity for profit within a radius of less than 10 miles from the activity upon the athletic property of the charitable organization.

(2) The activity occurring at the charitable organization's athletic property is in direct competition with a taxpayer's similar activity or property.

(3) The charitable organization or another direct user charges an admission fee to the public, a rental or leasing fee or other charge for participation in the activity or for direct use of the athletic property. If the relationship of the annual gross receipts to operating expenses and overhead warrants further investigation, the board of assessors may request such additional information as is necessary to determine whether the activity is commercial, charitable or in fulfillment of a basic public need.

F. The following information provides a basis for a determination that an athletic property is exempt from the property tax:

(1) A description of the relationship between the direct user's administration and promotion of the activity and the direct user's primary program for administration and promotion of activities in which it normally engages in furtherance of a charitable purpose or in fulfillment of a basic public need;

(2) Whether a direct user's activity is open to the public;

(3) Whether the publicly accessible activity serves a basic public need and, if so, a description of what the basic public need is;

(4) Whether there is a membership requirement for participation in the activity on the athletic property and, if so, a description of the membership requirement and its relationship to the following:

(a) A charitable purpose; or

(b) A basic public need; or

(5) Whether an individual who participates in the activity on the athletic property receives instruction and the relationship between the instruction or uninstructed activity and the following:

(a) A charitable purpose; or

(b) A basic public need.

G. In order for the board of assessors to determine the amount of any tax, the organization applying for the exemption shall provide the following information:

(1) The total number of days that an athletic property was normally available for use during the organization's fiscal year last preceding the January 1st date of assessment of the property;

(2) The number of days the athletic property was in use during the fiscal year for a purpose which is commercial rather than either charitable or in fulfillment of a basic public need.

**If an athletic property is in use for a commercial purpose for any part of a day, such use is a full day of commercial use, and if the property is normally available for use for any purpose for part of a day, this is a full day's availability. The tax is computed by multiplying the percentage which the number of days of commercial use represents in relation to the total number of days that the property was normally available for use for any purpose during the fiscal year by the amount of tax which would result if the property were subject to tax for the entire year.**

#### STATEMENT OF FACT

This bill permits the taxation of athletic property otherwise tax exempt because owned by a tax exempt organization, if the property is used for noncharitable purposes in direct competition with a taxable property or facility engaged in the same activity.