

1	(EMERGENCY)
· 2 3	SECOND REGULAR SESSION
4 5	ONE HUNDRED AND ELEVENTH LEGISLATURE
6 7	Legislative Document No. 2363
8 9 10	H.P. 1787 House of Representatives, March 27, 1984 Submitted by the Department of Finance and Administration pursuant to Joint Rule 24. Reference to the Committee on Taxation is suggested and ordered
11 12	Presented by Representative Kane of So. Portland. Cosponsors: Representative Cashman of Old Town, Representative Rolde of York and Senator Clark of Cumberland.
13 14	STATE OF MAINE
15 16 17	IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-FOUR
18 19 20	AN ACT to Replace the Franchise Tax on Financial Institutions.
21 22 · 23	Emergency preamble. Whereas, Acts of the Legis- lature do not become effective until 90 days after adjournment unless enacted as emergencies; and
24 25 26 27 28 29	Whereas, in January, 1983, the United States Su- preme Court, opinion in <u>Memphis Bank and Trust Compa-</u> <u>ny v. Garner</u> called in to question the validity of Maine's bank franchise law because it, like the tax considered in <u>Garner</u> excludes state and local obliga- tions from its base; and
30 31 32 33	Whereas, it is necessary to replace the existing franchise tax with a tax on financial institutions based on both the income and assets of financial in- stitutions; and

1 Whereas, in the judgment of the Legislature, 2 these facts create an emergency within the meaning of 3 the Constitution of Maine and require the following 4 legislation as immediately necessary for the preser-5 vation of the public peace, health and safety; now, 6 therefore,

7 Be it enacted by the People of the State of Maine as 8 follows:

9 Sec. 1. 36 MRSA §5102, sub-§6, as amended by PL 10 1971, c. 61, §2, is further amended to read:

11 6. <u>Corporation</u>. "Corporation" means any business 12 entity subject to income taxation as a corporation 13 under the laws of the United States, excepting corpo-14 rations subject to tax under sections 2511 to 2522 15 and section 5206.

Sec. 2. 36 MRSA §5206, as amended by PL 1983, c. 590, §3, is repealed and the following enacted in its place:

19 §5206. Franchise tax on financial institutions

A tax is imposed for each calendar year or fiscal year ending during that calendar year upon the franchise or privilege of doing business in this State of every taxable entity as defined in section 5206-B, subsection 1. The tax shall be the sum of the following:

26 <u>1. Franchise tax on Maine net in-</u> 27 <u>come. Five-tenths percent of Maine net income for</u> 28 <u>those taxable entities, as defined in section 5206-B,</u> 29 <u>subsection 1.</u>

30 2. Franchise tax on assets. Four cents per 31 \$1,000 of assets, as defined in section 5206-B, sub-32 section 3.

33 <u>3. Credit against tax. In each taxable year in</u> 34 which a financial institution sustains a book net op-35 erating loss, a credit shall be allowed against the 36 franchise tax on assets under subsection 2. The 37 credit shall be computed by multiplying the book net 38 operating loss by the applicable franchise tax rate

1	imposed by subsection 1. The total amount of any such
2	credit allowed shall not exceed the franchise tax on
3	assets due under subsection 2. In any tax year in
4	which there is excess credit, the excess credit shall
5	be carried forward for no more than the next 5 tax
6	years and can be applied against the tax computed un-
7	der subsections 1 and 2.
8	4. No increase in the franchise tax under this
9	section shall be adopted unless a comparable percent-
10	age increase is adopted under section 5200.
11	Sec. 3. 36 MRSA §5206-A, as amended by PL 1983,
12	c. 480, Pt. A, §66, is repealed and the following en-
13	acted in its place.
14	§5206-A. Utilization of net operating loss carry
15	forward
16	Any taxable entity which has sustained a book net
17	operating loss in a tax year ending on or after Janu-
18	ary 1, 1980, but before January 1, 1984, shall be en-
19	titled to apply the book net operating loss against
20	Maine net income defined in section 5206, subsection
21	1 when computing its franchise tax under section
22	5206, subsection 1. The total amount of the book net
23	operating loss which can be utilized shall not exceed
24	net income as defined in section 5206-B, subsection
25	2. Any excess net operating loss shall be carried
26	forward for no more than the next 3 tax years.
27	Sec. 4. 36 MRSA §5206-B is enacted to read:
28	§5206-B. Definitions
29	As used in this section, unless the context oth-
30	erwise indicates, the following terms shall have the
31	following meanings.
32	1. Affiliated group. "Affiliated group" means a
33	group of 2 or more entities in which more than 50% of
34	the voting stock of each member corporation is di-
35	rectly or indirectly owned by a common owner or own-
36	ers, either corporate or noncorporate, or by one or
37	more of the member corporations.

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2 sets as reported in United States Internal Revenue 3 Service Form 1120, Schedule L. 4 A. The asset base subject to the tax imposed un- der section 5206, subsection 2 shall be reduced by: 7 (1) The total assets of a taxable entity's subsidiary or subsidiaries not incorporated under the laws of the State. 10 3. Maine net income. "Maine net income" means for any taxable year, a taxable entity's net income or loss per books, as reported in the United States Internal Revenue Service Form 1120, Schedule M, Line 11 A. To the extent that a taxable entity derives income from a unitary business carried on by 2 or more members of an affiliated group, Maine net income shall be determined by apportioning, in accordance with chapter 821, that part of net in- come of the entire group which derives from the unitary business. 22 4. Taxable entity. "Taxable entity" means a commercial bank, savings bank, savings institution, industrial bank, savings and loan association, loan and building association, financial institution hold- ing company and subsidiary of any financial institu- tion. 23 5. Unitary business. "Unitary business" means a business activity which is characterized by unity of ownership, functional integration, centralization of management or economies of scale. 33 §206-C. Refunds 34 A claim for a refund for any tax year prior to 1983, resulting from the deduction from federal tax- able income of interest earned on obligations of the Federal Covernment, shall be filed on or before May	1	Assets. "Assets" mean total end of year as-
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37 Federal Government, shall be filed on or before May		1905, resulting from the deduction from rederal tax-
 Federal Government, shall be filed on or before May 15, 1984. For tax years ending in 1983, a tax entity 		able income of interest earned on obligations of the
38 15, 1984. For tax years ending in 1983, a tax entity		Federal Government, shall be filed on or before May
	38	15, 1984. For tax years ending in 1983, a tax entity

shall deduct interest earned on obligations of the
 Federal Government from federal taxable income in
 computing Maine net income. A tax entity shall be
 entitled to a refund of any estimated tax payments
 during the year 1983 which exceed tax liability.

6 Emergency clause. In view of the emergency cited 7 in the preamble, this Act shall take effect when ap-8 proved, except sections 1 to 4 of this Act shall be-9 come effective for taxable years beginning on or af-10 ter January 1, 1984.

STATEMENT OF FACT

12 The purpose of this bill is to create a revised 13 franchise tax on financial institutions to replace 14 the existing franchise tax on banks. In January, 15 1983, the United States Supreme Court struck down 16 Tennessee's tax on bank earnings because it did not 17 tax interest on obligations of the state or its po-18 litical subdivisions. Maine's present franchise tax is similar to Tennessee's franchise tax, as it does 19 20 not include interest from any state or municipal ob-21 ligations.

22 Maine has received an average of \$500,000 annual-23 ly over the past 4 years from Maine's financial in-24 stitutions. This bill generates approximately 25 \$600,000 in taxes for the State.

The new franchise tax is based on both the assets and income of the financial institutions and other financial entities. As earnings and assets increase, the taxes paid to the State would increase correspondingly.

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