

MAINE STATE LEGISLATURE

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1 (EMERGENCY)

2 SECOND REGULAR SESSION
3

4 ONE HUNDRED AND ELEVENTH LEGISLATURE
5

6 Legislative Document

No. 2363

7
8 H.P. 1787 House of Representatives, March 27, 1984

9 Submitted by the Department of Finance and Administration pursuant to
10 Joint Rule 24.

11 Reference to the Committee on Taxation is suggested and ordered
printed.

EDWIN H. PERT, Clerk

Presented by Representative Kane of So. Portland.

12 Cosponsors: Representative Cashman of Old Town, Representative Rolde
of York and Senator Clark of Cumberland.

13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-FOUR
17

18 AN ACT to Replace the Franchise Tax
19 on Financial Institutions.
20

21 Emergency preamble. Whereas, Acts of the Legis-
22 lature do not become effective until 90 days after
23 adjournment unless enacted as emergencies; and

24 Whereas, in January, 1983, the United States Su-
25 preme Court, opinion in Memphis Bank and Trust Compa-
26 ny v. Garner called in to question the validity of
27 Maine's bank franchise law because it, like the tax
28 considered in Garner excludes state and local obliga-
29 tions from its base; and

30 Whereas, it is necessary to replace the existing
31 franchise tax with a tax on financial institutions
32 based on both the income and assets of financial in-
33 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. Corporation. "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.

16 Sec. 2. 36 MRSA §5206, as amended by PL 1983, c.
17 590, §3, is repealed and the following enacted in its
18 place:

19 §5206. Franchise tax on financial institutions

20 A tax is imposed for each calendar year or fiscal
21 year ending during that calendar year upon the fran-
22 chise or privilege of doing business in this State of
23 every taxable entity as defined in section 5206-B,
24 subsection 1. The tax shall be the sum of the fol-
25 lowing:

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

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 3. Credit against tax. In each taxable year in
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.

1 2. Assets. "Assets" mean total end of year as-
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-
5 der section 5206, subsection 2 shall be reduced
6 by:

7 (1) The total assets of a taxable entity's
8 subsidiary or subsidiaries not incorporated
9 under the laws of the State.

10 3. Maine net income. "Maine net income" means
11 for any taxable year, a taxable entity's net income
12 or loss per books, as reported in the United States
13 Internal Revenue Service Form 1120, Schedule M, Line
14 1.

15 A. To the extent that a taxable entity derives
16 income from a unitary business carried on by 2 or
17 more members of an affiliated group, Maine net
18 income shall be determined by apportioning, in
19 accordance with chapter 821, that part of net in-
20 come of the entire group which derives from the
21 unitary business.

22 4. Taxable entity. "Taxable entity" means a
23 commercial bank, savings bank, savings institution,
24 industrial bank, savings and loan association, loan
25 and building association, financial institution hold-
26 ing company and subsidiary of any financial institu-
27 tion.

28 5. Unitary business. "Unitary business" means a
29 business activity which is characterized by unity of
30 ownership, functional integration, centralization of
31 management or economies of scale.

32 Sec. 5. 36 MRS §5206-C is enacted to read:

33 §5206-C. Refunds

34 A claim for a refund for any tax year prior to
35 1983, resulting from the deduction from federal tax-
36 able income of interest earned on obligations of the
37 Federal Government, shall be filed on or before May
38 15, 1984. For tax years ending in 1983, a tax entity

