

# MAINE STATE LEGISLATURE

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(EMERGENCY)

SECOND REGULAR SESSION

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ONE HUNDRED AND ELEVENTH LEGISLATURE

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Legislative Document

No. 2394

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H.P. 1802

House of Representatives, March 29, 1984

On Motion of Representative Kane of So. Portland, referred to the Committee on Taxation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Kane of So. Portland.

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

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STATE OF MAINE

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

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AN ACT to Replace the Franchise Tax  
on Financial Institutions.

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Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, in January, 1983, the United States Supreme Court, opinion in Memphis Bank and Trust Company v. Garner called in to question the validity of Maine's bank franchise law because it, like the tax considered in Garner excludes state and local obligations from its base; and

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 institutions; 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17 590, §3, is repealed and the following enacted in its  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 under  
7 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 MRS §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 MRS §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 MRSA §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

