

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

(New Draft of H.P. 1802, L.D. 2394)

SECOND REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document No. 2472

H.P. 1870 House of Representatives, April 13, 1984

Reported by the Minority from the Committee on Taxation and printed under Joint Rule 2.

Original bill presented by Representative Kane of So. Portland.
Cosponsored by Representative Cashman of Old Town, Representative Rolde of York and Senator Clark of Cumberland.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

AN ACT to Replace the Franchise Tax on
Financial Institutions.

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

PART A

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

6. Corporation. "Corporation" means any business entity subject to income taxation as a corporation under the laws of the United States, excepting corporations subject to tax under sections 2511 to 2522 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Sec. 2. 36 MRSA §5206, as amended by PL 1983, c. 590, §3, is repealed and the following enacted in its place:

1 §5206. Franchise tax on financial institutions

2 A tax is imposed for each calendar year or fiscal
3 year ending during that calendar year upon the fran-
4 chise or privilege of doing business in this State of
5 every taxable entity as defined in section 5206-B,
6 subsection 4. The tax shall be the sum of the fol-
7 lowing:

8 1. Franchise tax on Maine net income. One per-
9 cent of Maine net income, as defined in section
10 5206-B, subsection 3.

11 2. Franchise tax on assets. Eight cents per
12 \$1,000 of assets, as defined in section 5206-B, sub-
13 section 2.

14 3. Credit against tax. In each taxable year in
15 which a financial institution sustains a book net op-
16 erating loss, a credit shall be allowed against the
17 franchise tax on assets under subsection 2. The
18 credit shall be computed by multiplying the book net
19 operating loss by the applicable franchise tax rate
20 imposed by subsection 1. The total amount of any such
21 credit allowed shall not exceed the franchise tax on
22 assets due under subsection 2. In any tax year in
23 which there is excess credit, the excess credit shall
24 be carried forward for no more than the next 5 tax
25 years and can be applied against the tax computed un-
26 der subsections 1 and 2.

27 Sec. 3. 36 MRSA §5206-A, as amended by PL 1983,
28 c. 480, Pt. A, §66, is repealed and the following en-
29 acted in its place.

30 §5206-A. Utilization of net operating loss carry
31 forward

32 Any taxable entity which has sustained a book net
33 operating loss in a tax year ending on or after Janu-
34 ary 1, 1980, but before January 1, 1984, shall be en-
35 titled to apply the book net operating loss against
36 Maine net income defined in section 5206-B, subsec-
37 tion 3 when computing its franchise tax under section
38 5206, subsection 1. The total amount of the book net
39 operating loss which can be utilized shall not exceed
40 net income as defined in section 5206-B, subsection

1 3. Any excess net operating loss shall be carried
2 forward for no more than the next 3 tax years.

3 Sec. 4. 36 MRS §5206-B is enacted to read:

4 §5206-B. Definitions

5 As used in this section, unless the context oth-
6 erwise indicates, the following terms shall have the
7 following meanings.

8 1. Affiliated group. "Affiliated group" means a
9 group of 2 or more entities in which more than 50% of
10 the voting stock of each member corporation is di-
11 rectly or indirectly owned by a common owner or own-
12 ers, either corporate or noncorporate, or by one or
13 more of the member corporations.

14 2. Assets. "Assets" mean total end of year as-
15 sets as reported in United States Internal Revenue
16 Service Form 1120, Schedule L.

17 A. The asset base subject to the tax imposed un-
18 der section 5206, subsection 2 shall be reduced
19 by:

20 (1) The total assets of a taxable entity's
21 subsidiary or subsidiaries not incorporated
22 under the laws of the State.

23 3. Maine net income. "Maine net income" means
24 for any taxable year, a taxable entity's net income
25 or loss per books, as reported in the United States
26 Internal Revenue Service Form 1120, Schedule M, Line
27 1.

28 A. To the extent that a taxable entity derives
29 income from a unitary business carried on by 2 or
30 more members of an affiliated group, Maine net
31 income shall be determined by apportioning, in
32 accordance with chapter 821, that part of net in-
33 come of the entire group which derives from the
34 unitary business.

35 4. Taxable entity. "Taxable entity" means a
36 commercial bank, savings bank, savings institution,
37 industrial bank, savings and loan association, loan

1 and building association, financial institution hold-
2 ing company and subsidiary of any financial institu-
3 tion.

4 5. Unitary business. "Unitary business" means a
5 business activity which is characterized by unity of
6 ownership, functional integration, centralization of
7 management or economies of scale.

8 PART B

9 36 MRSA §5206, sub-§§1-A and 2-A are enacted to
10 read:

11 1-A. Franchise surcharge on Maine net income.
12 One quarter of one percent of Maine net income, as
13 defined in section 5206-B, subsection 3;

14 2-A. Franchise surcharge on assets. Two cents
15 per \$1,000 of assets, as defined in section 5206-B,
16 subsection 2;

17 PART C

18 Effective date. This Act is effective for tax-
19 able years ending in 1984 or thereafter, except that,
20 Part B of this Act shall be effective for taxable
21 years ending in 1984 only.

22 Fiscal Note

23 This new draft will result in the following gain
24 in revenue:

	<u>1984-85</u>
25	
26 General Fund	\$1,632,000
27 Local Government Fund	68,000

1

STATEMENT OF FACT

2 The purpose of this new draft is to create a re-
3 vised franchise tax on financial institutions to re-
4 place the existing franchise tax on banks. In Janu-
5 ary, 1983, the United States Supreme Court struck
6 down Tennessee's tax on bank earnings because it did
7 not tax interest on obligations of the state or its
8 political subdivisions. Maine's present franchise
9 tax is similar to Tennessee's franchise tax, as it
10 does not include interest from any state or municipal
11 obligations.

12 This new draft increases the tax rates to recover
13 approximately \$1,700,000, in 1984 and \$1,400,000 in
14 subsequent years. This amount should be sufficient
15 to cover any refunds requested by financial institu-
16 tions as a result of the unconstitutionality of the
17 tax in prior years.

18 The new franchise tax is based on both the assets
19 and income of the financial institutions and other
20 financial entities. As earnings and assets increase,
21 the taxes paid to the State would increase corre-
22 spondingly.

23

6790041184