

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 2075

7 H.P. 1472

House of Representatives, February 26, 1986

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

Reference to the Committee on Taxation suggested and ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Cashman of Old Town.

Cosponsored by Senator Twitchell of Oxford, Representative Mayo of
Thomaston and Representative Swazey of Bucksport.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SIX
16

17 AN ACT Concerning Additional Administrative
18 Changes in Maine Tax Laws.
19

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

22 Sec. 1. 36 MRSA §141, sub-§3, as enacted by PL
23 1979, c. 378, §4, is repealed.

24 Sec. 2. 36 MRSA §142 is enacted to read:

25 §142. Cancellation and abatement

26 The State Tax Assessor may, within 3 years from
27 the date of assessment, cancel any tax which has been
28 levied illegally. In addition, if justice requires,
29 the State Tax Assessor may, with the approval of the
30 Governor, abate, within 3 years from the date of as-
31 essment, all or any part of any tax assessed by the
32 State Tax Assessor.

33 Sec. 3. 36 MRSA §171 is enacted to read:

1 §171. Demand letter

2 If any tax imposed by this Title is not paid on
3 or before its due date and no further administrative
4 or judicial review of the assessment is available under
5 section 151, the State Tax Assessor, within 3
6 years after administrative and judicial review have
7 been exhausted, may give the taxpayer notice of the
8 amount to be paid, specifically designating tax, interest
9 and penalty, and demand payment of that amount
10 within 10 days of the taxpayer's receipt of notice.
11 The notice shall include a warning that, upon failure
12 of that taxpayer to pay as demanded, the State Tax
13 Assessor may proceed to collect the amount due by any
14 collection method authorized by this Title.

15 Sec. 4. 36 MRSA §173 is enacted to read:

16 §173. Collection by warrant

17 1. Request and issuance of warrant. If the tax-
18 payer does not make payment as demanded pursuant to
19 section 171, the State Tax Assessor may file in the
20 office of the clerk of the Superior Court of any
21 county a certificate addressed to the clerk of that
22 court specifying the amount of tax, interest and pen-
23 alty which was demanded, the name and address of the
24 taxpayer as it appears on the records of the State
25 Tax Assessor, the facts whereby the amount has become
26 due, and the notice given and requesting that a war-
27 rant be issued against the taxpayer in the amount of
28 the tax, penalty and interest set forth in the cer-
29 tificate and with costs. If the State Tax Assessor
30 reasonably believes that the taxpayer may abscond
31 within the 10-day period provided by section 171, he
32 may, without giving notice to or making demand upon
33 the taxpayer, request immediate issuance of a war-
34 rant. Immediately upon the filing of the certificate,
35 the clerk of the Superior Court shall issue a warrant
36 in favor of the State against the taxpayer in the
37 amount of tax, interest and penalty set forth in the
38 certificate and with costs.

39 2. Effect of warrant. The warrant shall have the
40 force and effect of an execution issued upon a judg-
41 ment in a civil action for taxes and may be served in
42 the county where the taxpayer may be found by the

1 sheriff of that county or his deputies or by any
2 agent of the State Tax Assessor authorized under sec-
3 tion 112, subsection 6, to collect any tax imposed by
4 this Title. In the execution of the warrant and col-
5 lection of taxes pursuant to this Title, including
6 supplementary disclosure proceedings for that purpose
7 under Title 14, chapter 502, an agent of the State
8 Tax Assessor shall have the powers of a sheriff and
9 shall be entitled to collect from the debtor the same
10 fees and charges permitted to a sheriff. Any such
11 fees and charges collected by that agent shall be re-
12 mitted promptly to the State.

13 Warrants shall be returnable within one year. New
14 warrants may be issued on any such certificate within
15 2 years from the return day of the last preceding
16 warrant for sums remaining unsatisfied.

17 Sec. 5. 36 MRSA §§175, 176 and 177 are enacted
18 to read:

19 §175. Tax lien

20 1. Filing. If any tax imposed by this Title is
21 not paid when due, the State Tax Assessor may file in
22 the registry of deeds of any county or in the office
23 in which a financing statement with respect to tangi-
24 ble personal property is properly filed under Title
25 11, section 9-401, a notice of lien specifying the
26 amount of the tax, interest, penalty and costs due,
27 the name and last known address of the person liable
28 for the amount and the fact that the State Tax Asses-
29 sor has compiled with all the provisions of this ti-
30 tle in the assessment of the tax. From the time of
31 filing, the amount set forth in a certificate filed
32 in a registry of deeds of a county constitutes a lien
33 upon all real property in that county then owned or
34 thereafter acquired by that person in the period be-
35 fore the expiration of the lien. From the time of
36 filing, the amount set forth in a certificate filed
37 in the office in which a financing statement with re-
38 spect to personal property is properly filed consti-
39 tutes a lien upon all personal property in this State
40 then owned or thereafter acquired by that person in
41 the period before the expiration of the lien. In the
42 case of any prior mortgage on real or personal prop-
43 erty written to secure a present debt and also future

1 advances, the mortgage to the mortgagor, the lien
2 provided, when notice of the lien has been filed in
3 the proper office, shall be subject to the prior
4 mortgage unless the assessor also notifies the mort-
5 gagee of the recording of the lien in writing, in
6 which case any indebtedness created from the mortga-
7 gor to the mortgagee, shall be junior to the lien
8 provided for. The lien provided has the same force,
9 effect and priority as a judgment lien and shall con-
10 tinue for 5 years from the date of recording unless
11 sooner released or otherwise discharged. The lien
12 may, within the 5-year period, or within 5 years from
13 the date of the last extension of the lien in the
14 manner provided in this subsection, be extended by
15 filing for record in the appropriate office a copy of
16 the notice and, from the time of filing, that lien
17 shall be extended for 5 years unless sooner released
18 or otherwise discharged.

19 2. Release. The State Tax Assessor shall issue
20 to the taxpayer a certificate of release of the lien
21 or release all or any portion of the property subject
22 to any lien provided for in this part or subordinate
23 the lien to other liens if:

24 A. The State Tax Assessor finds that the liabil-
25 ity for the amount demanded, together with costs,
26 has been satisfied or has become unenforceable by
27 reason of lapse time;

28 B. A bond is furnished to the State Tax Assessor
29 with surety approved by the State Tax Assessor in
30 a sum sufficient to equal the amount demanded,
31 together with costs and conditioned upon payment
32 of any judgment rendered in proceedings regularly
33 instituted by the State Tax Assessor to enforce
34 collection of the bond at law or of any amount
35 agreed upon in writing by the State Tax Assessor
36 to constitute the full amount of the liability;

37 C. The State Tax Assessor determines at any time
38 that the interest of this State in the property
39 has no value; or

40 D. The State Tax Assessor determines that the
41 taxes are sufficiently secured by a lien on other
42 property of the taxpayer or that the release or

1 subordination of the lien will not endanger or
2 jeopardize the collection of the taxes.

3 3. Enforcement. The lien provided for by subsec-
4 tion 1 may be enforced at any time after the tax lia-
5 bility with respect to which the lien arose becomes
6 collectible under section 173, subsection 1, by a
7 civil action brought by the Attorney General in the
8 name of the State in the Superior Court of the county
9 in which the property is located to subject any prop-
10 erty, of whatever nature, in which the taxpayer has
11 any right, title or interest, to the payment of the
12 tax or liability. The court shall, after the parties
13 have been duly notified of the action, proceed to ad-
14 judicate all matters involved in the action and fi-
15 nally determine the merits of all claims to and liens
16 upon the property and, in all cases where a claim or
17 interest of the State in the property is established,
18 may decree a sale of the property by the proper offi-
19 cer of the court and a distribution of the proceeds
20 of the sale according to the findings of the court.
21 If the property is sold to satisfy a lien held by the
22 State, the State may bid at the sale such sum, not
23 exceeding the amount of that lien plus expenses of
24 sale, as the State Tax Assessor directs.

25 §176. Levy

26 1. Definitions. As used in this section, unless
27 the context otherwise indicates, the following terms
28 have the following meanings.

29 A. "Delinquent," when used to refer to taxes,
30 means an assessed tax not paid on its due date and as
31 to which no further administrative or judicial review
32 is available pursuant to section 151. When used to
33 refer to a taxpayer, the term means a taxpayer who is
34 liable for delinquent taxes.

35 B. "Levy" means an administrative power to col-
36 lect delinquent taxes by means of the procedure pro-
37 vided for in this section or the exercise of that
38 power. The power to levy shall include the powers of
39 distrain, seizure by any means, garnishment and
40 sale, all in accordance with the terms of this sec-
41 tion. The power to levy shall also include the power
42 to release the levy where it is no longer necessary

1 to further the process of collection of delinquent
2 taxes.

3 C. "Property" means the following assets of de-
4 linquent taxpayers, whether in their possession at
5 their business premises or in the possession of 3rd
6 parties: Cash, bank accounts, salaries and wages, ac-
7 counts receivable, life insurance and endowment con-
8 tracts, securities and other choses in action and
9 rights to receive money, subject to the jurisdiction
10 of the State, to the extent that the assets, other
11 than salaries and wages, are in existence at the time
12 of the levy to which they are subjected. The term
13 does not include any amount payable to an individual
14 with respect to his unemployment under unemployment
15 compensation laws, nor any amount payable to an indi-
16 vidual under the United States Social Security laws;
17 nor does the term include property or rights which,
18 at the time of the levy, are subject to an attachment
19 or execution under any judicial process.

20 D. "Salaries and wages" means gross compensation
21 received by an employee which is subject to federal
22 withholding under the United States Internal Revenue
23 Code of 1954, as amended.

24 E. "Tax" means a sales, use or income tax im-
25 posed under this Title, together with interest and
26 penalties.

27 2. Levy power. The State Tax Assessor shall have
28 the power to levy upon the property of any delinquent
29 taxpayer and may impose successive levies, to the ex-
30 tent necessary to discharge the amount of the delin-
31 quency. The levy power shall be exercised in accord-
32 ance with this chapter.

33 3. Levy procedure. The State Tax Assessor shall
34 levy taxes according to the procedure set out in this
35 subsection.

36 A. When the State Tax Assessor determines that
37 any taxpayer is delinquent in the payment of a
38 tax, he may cause a demand letter to be served
39 upon the taxpayer in the manner specified in sec-
40 tion 111, subsection 2. The demand letter shall
41 comply in all respects with the provisions of

1 section 171 and shall also state that no further
2 administrative or judicial review is available as
3 to the delinquent amount pursuant to section 151,
4 and, that, if payment of the amount is not re-
5 ceived within 10 days of the date of the demand,
6 the State Tax Assessor is empowered by law to
7 levy upon the property of the taxpayer, including
8 his salary or wages, in accordance with this
9 chapter.

10 B. If a taxpayer fails to tender payment of de-
11 linquent taxes within 10 days of his receipt of a
12 demand letter, the State Tax Assessor may levy
13 upon that taxpayer's property in the manner pre-
14 scribed as follows:

15 (1) The taxpayer's property in his posses-
16 sion and located on his business premises
17 may be physically seized during normal busi-
18 ness hours and where appropriate, sold in
19 accordance with subsection 5. Prior to a
20 physical seizure of property located on the
21 taxpayer's business premises, the State Tax
22 Assessor's agent for collection must either
23 secure the taxpayer's written consent or ob-
24 tain an ex parte court order permitting him
25 to enter upon the premises for the purpose
26 of levying upon the the taxpayer's property
27 and directing the sheriff for the county in
28 which the premises are located to assist him
29 in effecting the entry and levy. Application
30 for such an order may be made either to the
31 Superior Court for Kennebec County or for
32 the county in which the premises are located
33 and the order shall issue in every case
34 where the court is satisfied that the State
35 Tax Assessor has complied with this section.

36 (2) A levy upon the taxpayer's property in
37 the possession of a 3rd party is accom-
38 plished by service upon such party of a no-
39 tice of levy and by service upon the taxpay-
40 er of a copy of the notice, in the manner
41 specified in section 111, subsection 2. The
42 notice of levy shall specify the name and
43 address of the taxpayer, the property to be
44 levied upon and the amount for which the

1 property is subjected to levy, shall prohib-
2 it the 3rd party from paying over or other-
3 wise disposing of the property to the tax-
4 payer, except as provided in subparagraph
5 (3), or to anyone other than the State Tax
6 Assessor, and shall require the 3rd party to
7 surrender and deliver up the property to the
8 State Tax Assessor within 10 days of the
9 date of the notice, except as provided in
10 subparagraphs (3) and (4). The notice of
11 levy shall further state that failure to
12 comply with its terms will subject the 3rd
13 party to liability to the State Tax Assessor
14 as provided in subsection 4. Service of a
15 notice of levy shall have the same legal ef-
16 fect as physical seizure, giving the State
17 Tax Assessor constructive possession of the
18 property notice as of the date of service.

19 (3) A levy upon salary and wages shall be
20 made in the manner prescribed in subpara-
21 graph 2, except that the notice of levy
22 shall specify the amount or percentage to be
23 surrendered and delivered to the State Tax
24 Assessor by the taxpayer's employer for each
25 pay period, consistent with this subpara-
26 graph. Salaries and wages are exempt from
27 levy to the extent of 75% of the taxpayer's
28 disposable earnings for any pay period, or
29 an amount equal to the federal minimum hour-
30 ly wage multiplied by 30, multiplied by the
31 number of weeks in the pay period, whichever
32 is less. A levy on salaries and wages shall
33 be continuous from the date on which the no-
34 tice of levy is served until the delinquency
35 is discharged and shall apply to all pay pe-
36 riods commencing after the date on which the
37 notice of levy is served. The State Tax As-
38 essor shall notify the taxpayer's employer
39 immediately upon discharge of the delinquen-
40 cy that the levy has been discontinued.

41 (4) A notice of levy upon a life insurance
42 or endowment contract may require payment to
43 the State Tax Assessor of the full amount
44 which the taxpayer could have had advanced
45 to him pursuant to such contract as of the

1 date of payment to the extent required to
2 discharge the delinquency. Payment shall be
3 set for a date 90 days subsequent to the
4 date on which the notice is served. The no-
5 tice of levy in such a case shall constitute
6 the exercise of the taxpayer's right to such
7 an advance.

8 4. Duty and liability of 3rd party. Any person
9 in possession of property of the taxpayer upon whom a
10 notice of levy is served shall comply in a timely
11 fashion with the terms of the levy. Upon compliance,
12 that person shall be discharged from any obligation
13 or liability to the delinquent taxpayer with respect
14 to the property levied upon. Any person who fails to
15 comply with terms of a notice of levy shall be per-
16 sonally liable to the State Tax Assessor in an amount
17 equal to the value of the property with respect to
18 which the notice was served, but not exceeding the
19 amount of taxes for the collection of which the levy
20 was made. A refusal to comply with the terms of a no-
21 tice of levy by a person having a valid claim against
22 the delinquent taxpayer which accrued prior to ser-
23 vice of that notice is, to the extent, of that claim,
24 a defense to that liability.

25 A person who fails to comply with the terms of a no-
26 tice of levy without reasonable cause shall be liable
27 for an additional penalty equal to 50% of the liabil-
28 ity previously described in this subsection. The pre-
29 viously described liability, but not the 50% penalty,
30 shall be credited against the tax delinquency for the
31 collection of which the levy was made.

32 5. Sale of property. The State Tax Assessor
33 shall sell property levied upon where necessary in
34 order to enable him to apply the proceeds to the tax
35 delinquency for the collection of which the levy was
36 made. A sale of property levied upon under this chap-
37 ter shall be conducted by the State Tax Assessor or
38 his designee in a commercially reasonable manner no
39 later than 60 days after the date on which physical
40 possession of the property was obtained. The State
41 Tax Assessor shall apply the proceeds of any sale to
42 the liability of the delinquent taxpayer and any bal-
43 ance remaining after discharge of the delinquency
44 shall be returned to the taxpayer, unless a court or-

1 ders otherwise. The purchaser at such a sale of prop-
2 erty levied upon shall receive good title to the
3 property, free and clear of all encumbrances and
4 claims, legal and equitable, not explicitly stated at
5 the time of sale.

6 6. Production of books. If a levy has been made
7 or is about to be made on property, any person having
8 custody or control of any books or records containing
9 evidence or statements relating to the property sub-
10 ject to levy shall, upon demand of the State Tax As-
11 essor, exhibit the books or records to the State Tax
12 Assessor. If any person refuses to comply with the
13 demand, the State Tax Assessor may apply for an ex
14 parte order in the Superior Court for Kennebec County
15 or for the county where the books or records are lo-
16 cated, requiring production for inspection and copy-
17 ing of the books and records. The order shall issue
18 in every case where the court is satisfied that there
19 are reasonable grounds for the demand.

20 7. Actions permitted. Any person, other than the
21 taxpayer whose delinquency occasioned the levy, who
22 claims that property in which he has an interest was
23 wrongfully made the subject of a notice of levy pur-
24 suant to subsection 3, paragraph B, subparagraph (1),
25 may bring a civil action against the State Tax Asses-
26 sor in Superior Court. Any recovery in such an action
27 shall be limited to the value of the property levied
28 upon and may in no case exceed the proceeds of any
29 sale of the property conducted in accordance with
30 subsection 5. Except as provided in this subsection,
31 no suit for the purpose of restraining the collection
32 of taxes pursuant to this section may be maintained
33 in any court of this State by any person.

34 §177. Trust fund status of certain collections

35 1. Generally. All taxes collected by any person
36 from purchasers pursuant to Part 3, all taxes col-
37 lected by any person from purchasers under Part 3,
38 which have not been properly returned and credited to
39 the purchasers from whom they were collected, all
40 taxes collected by any person pursuant to chapter 451
41 or 459, and all taxes collected by any person pursu-
42 ant to chapter 827 shall constitute a special fund in
43 trust for the State Tax Assessor. The liability for

1 the taxes shall be enforceable by assessment and col-
2 lection, in the manner prescribed in this Part and
3 Parts 3, 5 and 8, against the person and against any
4 officer, director, member, agent or employee of that
5 person, who, in such capacity, is responsible for the
6 control or management of the funds or finances of
7 that person or is responsible for the payment of that
8 person's taxes. The term "purchasers," as used in
9 this subsection, includes persons who have paid rental
10 charges for living quarters in any hotel, rooming
11 house, tourist or trailer camp.

12 2. Responsible individual. Each person required
13 to collect taxes which are designated by subsection
14 1, as trust funds shall inform the State Tax Asses-
15 sor, at the time an audit of that person's trust fund
16 obligation is performed by the State Tax Assessor, of
17 the name and position of the individual who generally
18 is responsible for the control or management of that
19 person's funds or finances and, if different, the in-
20 dividual who is specifically responsible for the col-
21 lection and paying over of those trust funds. Any de-
22 ficiency assessments of taxes which are designated by
23 subsection 1, as trust funds shall be made jointly in
24 the names of the person required to collect the taxes
25 and of the designated responsible individual.

26 3. Notice to segregate. Whenever the State Tax
27 Assessor finds that the payment of the trust funds
28 established under subsection 1, will be jeopardized
29 by delay, neglect or misappropriation or whenever any
30 person fails to make payments of taxes or file re-
31 ports as required by Part 3, or by chapter 451, 459
32 or 827, the State Tax Assessor may direct that person
33 to segregate the trust funds from and not to commin-
34 gle them with any other funds or assets of that per-
35 son. Within 5 days after the mailing of notice of
36 that segregation requirement, all taxes which there-
37 after are collected shall be paid over an account to
38 the State Tax Assessor until the taxes are due. The
39 State Tax Assessor shall establish in the segregation
40 notice the manner in which the taxes are to be paid
41 to him. The segregation requirement shall remain in
42 effect until a notice of cancellation is given by the
43 State Tax Assessor.

1 4. Revocation for nonsegregation. Upon the expi-
2 ration of the 5-day period designated in subsection
3 3, if any person who is a "retailer" under Part 3 or
4 a fuel supplier, distributor or importer, subject to
5 Part 5, fails to make the required payments on ac-
6 count to the State Tax Assessor, the State Tax Asses-
7 sor may revoke any registration certificate which has
8 been issued to that person. The revocation shall be
9 reviewable in accordance with section 151.

10 Sec. 6. 36 MRSA §184 is enacted to read:

11 §184. Criminal offenses

12 Any person who is required under this Title to
13 collect, truthfully account for and pay over any tax
14 imposed by this Title and who intentionally fails to
15 collect or truthfully account for or pay over the tax
16 at the time required by law or rule shall, in addi-
17 tion to any other penalties provided by law, be
18 guilty of a Class D crime. For purposes of this sub-
19 section, the word "person" includes, in addition to
20 its defined meaning in section 111, subsection 3, any
21 officer, director, member, agent or employee of an-
22 other person who, in that capacity, is responsible
23 for the control or management of the funds and fi-
24 nances of that person or is responsible for either
25 the collection or payment of the retailer's taxes.

26 Sec. 7. 36 MRSA §187, sub-§3, as amended by PL
27 1981, c. 364, §15, is repealed and the following en-
28 acted in its place:

29 3. Failure to pay. Any person who fails to pay
30 is subject to this subsection.

31 A. Any person who fails to pay, on or before its
32 due date, any tax due under this Title shall be
33 liable for a penalty of \$5 or 5% of the unpaid
34 tax, whichever is greater, for each month or
35 fraction of a month during which the failure contin-
36 ues, provided that the penalty shall not ex-
37 ceed, in the aggregate, \$25 or 25% of the unpaid
38 tax, whichever is greater. For the purposes of
39 this subsection, an amount assessed upon a person
40 by the State Tax Assessor is to be considered due
41 as of the time prescribed for filing the return
42 on which it should have been reported.

1 B. Any person who fails to pay a tax assessment
2 for which no further administrative or judicial
3 review is available pursuant to section 151 and
4 the Maine Administrative Procedure Act, Title 5,
5 chapter 375, shall be liable for a penalty of \$25
6 or 25% of the tax due, whichever is greater, if
7 payment of the tax due is not made within 10 days
8 of the person's receipt of notice of demand for
9 payment as provided by this Title. This penalty
10 is to be explained in the notice of demand and is
11 final when levied. Notwithstanding other provi-
12 sions outside this paragraph, it is to be en-
13 forceable as though demand was made.

14 Sec. 8. 36 MRSA §1752, sub-§11, as amended by PL
15 1985, c. 276, §2, is further amended to read:

16 11. Retail sale or sale at retail. "Retail
17 sale" or "sale at retail" means any sale of tangible
18 personal property, in the ordinary course of busi-
19 ness, for consumption or use, or for any purpose oth-
20 er than for resale, except resale as a casual sale,
21 in the form of tangible personal property, any rental
22 of living quarters in any hotel, rooming house, tour-
23 ist or trailer camp, any rental of automobiles on a
24 short-term basis, other than rental to a person en-
25 gaged in the business of renting automobiles, the
26 sale of telephone or telegraph service and the sale
27 of extended cable television service. The term "re-
28 tail sale" or "sale at retail" includes conditional
29 sales, installment lease sales, and any other trans-
30 fer of tangible personal property when the title is
31 retained as security for the payment of the purchase
32 price and is intended to be transferred later. The
33 term "retail sale" or "sale at retail" also means
34 sale of products for internal human consumption to a
35 person for resale through coin-operated vending ma-
36 chines when sold to a retailer whose gross receipts
37 from the retail sale of tangible personal property
38 derived through sales from vending machines are more
39 than 50% of his gross receipts, which tax shall be
40 paid by the retailer to the State. The term "retail
41 sale" or "sale at retail" does not include any sale
42 by an executor or administrator in the settlement of
43 an estate, unless such sale is made through a retail-
44 er, or unless such sale is made in the continuation
45 or operation of a business; nor does the term include

1 any other isolated transaction in which any tangible
2 personal property is sold, transferred, offered for
3 sale or delivered by the owner of the property, such
4 sale, transfer, offer for sale, or delivery not being
5 made in the ordinary course of repeated and succes-
6 sive transactions of a like character by such owner,
7 such transactions being elsewhere sometimes referred
8 to as "casual sales." "Casual sales" includes transac-
9 tions by a civic, religious or fraternal organiza-
10 tion, which is not a registered retailer, at bazaars,
11 fairs, rummage sales, picnics or similar events but
12 not exceeding 8 days in a calendar year. The sale by
13 a registered retailer of tangible personal property,
14 which that retailer has used in the course of his or
15 its business, is not a casual sale and is a retail
16 sale subject to taxation under this Part, if that
17 property is of a like character to that sold in the
18 ordinary course of repeated and successive transac-
19 tions. "Casual sale" shall not include any transac-
20 tion in which tangible personal property is sold,
21 transferred or offered for sale by a representative
22 for the owner's account when such representative is a
23 registered retailer, in which event such registered
24 retailer shall have the same duties respecting such
25 sale as if he had sold on his own account. "Retail
26 sale" and "sale at retail" do not include the sale of
27 tangible personal property which becomes an ingredi-
28 ent or component part of, or which is consumed or de-
29 stroyed or loses its identity directly and primarily
30 in the production of, tangible personal property for
31 later sale or lease, other than lease for use in this
32 State, but shall include fuel and electricity but
33 shall not include electricity separately metered and
34 consumed in any electrolytic process for the manufac-
35 ture of tangible personal property for later sale,
36 nor any fuel oil or coal, the by-products from the
37 burning of which become an ingredient or component
38 part of tangible personal property for later sale.
39 "Retail sale" and "sale at retail" do not include the
40 sale, to a person engaged in the business of renting
41 automobiles, of automobiles, or integral parts of au-
42 tomobiles or accessories to automobiles, for rental
43 or for use in an automobile rented, on a short-term
44 basis. It shall be considered that tangible personal
45 property is "consumed or destroyed" or "loses its
46 identity" in such manufacture, if it has a normal
47 physical life expectancy of less than one year as a

1 usable item in the use to which it is applied. Tangi-
2 ble personal property is "consumed or destroyed" or
3 "loses its identity" in the production, if it has a
4 normal physical life expectancy of less than one year
5 as a usable item in the use to which it is applied.
6 "Retail sale" and "sale at retail" does not include
7 the sale, to a person engaged in the business of
8 renting automobiles, of automobiles or integral parts
9 of automobiles or accessories to automobiles, for
10 rental or for use in an automobile rented, on a
11 short-term basis. "Retail sale" or "sale at retail"
12 do not include the sale of containers, boxes, crates,
13 bags, cores, twines, tapes, bindings, wrappings, la-
14 bel and other packing, packaging and shipping mate-
15 rials when sold to persons for use in packing, pack-
16 aging or shipping tangible personal property sold by
17 them or upon which they have performed the service of
18 cleaning, pressing, dyeing, washing, repairing or re-
19 conditioning in their regular course of business and
20 which are transferred to the possession of the pur-
21 chaser of such tangible personal property.

22 Sec. 9. 36 MRSA §1757, as amended by PL 1979, c.
23 520, §3, is further amended to read:

24 §1757. Revocation of registration

25 The State Tax Assessor may revoke the registra-
26 tion certificate of a registrant who fails to file,
27 within 15 days after receipt of notice, a bond or de-
28 posit required under section 1759 and may revoke for
29 cause a registration certificate issued under chap-
30 ters 211 to 225. The State Tax Assessor may revoke
31 the registration certificate of a registrant who
32 fails to file with the State Tax Assessor within 15
33 days after the due date a return as required under
34 chapters 211 to 225. A revocation shall be review-
35 able in accordance with section 151. In any case
36 where a registrant has failed to pay any tax required
37 of him by this Part when the tax is shown to be due
38 on a report filed by the registrant, or admitted to
39 be due by the registrant, or has been determined to
40 be due and that determination has become final, noti-
41 fication of the registrant by the State Tax Assessor
42 as provided in this section shall operate to suspend
43 the registration certificate from the date of the no-
44 tice of suspension until such time as the delinquent

1 tax is paid or a bond or deposit, required under sec-
2 tion 1759, is filed with the State Tax Assessor or it
3 is determined by an appropriate court that revocation
4 is not warranted.

5 Sec. 10. 36 MRSA §1760, sub-§23, as amended by
6 PL 1975, c. 527, is further amended to read:

7 23. Motor vehicles. Motor vehicles purchased by
8 a nonresident and intended to be driven or transport-
9 ed outside the State immediately upon delivery by the
10 seller. If such motor vehicle is registered for use
11 in Maine within 6 12 months of the date of purchase,
12 the person seeking registration shall be liable for
13 use tax on the basis of the original purchase price;

14 Sec. 11. 36 MRSA §1760, sub-§23-A, as enacted by
15 PL 1979, c. 528, is amended to read:

16 23-A. Truck bodies and trailers. Truck bodies,
17 semitrailers and trailers, manufactured in Maine, ex-
18 cept camper bodies and trailers, purchased by a non-
19 resident who intends to remove them immediately from
20 the State upon delivery by the seller. If the truck
21 body, semitrailer or trailer is returned to Maine for
22 an otherwise taxable use in Maine within 6 12 months
23 of the date of purchase, the purchaser shall be lia-
24 ble for use tax, based on the original purchase
25 price.

26 Sec. 12. 36 MRSA §1760, sub-§25, as amended by
27 PL 1979, c. 687, §6, is further amended to read:

28 25. Boats sold to nonresidents. Sales in this
29 State to nonresidents of yachts and other pleasure
30 boats and commercial vessels and boats actually reg-
31 istered for numbering, enrolled or documented under
32 federal or foreign law in the appropriate
33 customhouses or registry offices for location thereof
34 or home ports therefor outside the State, when such
35 craft are either delivered outside the State or de-
36 livered in the State to be sailed or transported out-
37 side the State immediately upon delivery by the sell-
38 er; and any sales to nonresidents, under contracts
39 for the construction of any such craft to be so de-
40 livered, of materials to be incorporated therein; and
41 any sales to nonresidents for the repair, alteration,

1 refitting, reconstruction, overhaul or restoration of
2 any such craft to be so delivered, of materials to be
3 incorporated therein. If a craft so registered is
4 registered for a location or home port in the State,
5 within 6 12 months of the date of purchase, the per-
6 son seeking registration shall be liable for the use
7 tax on the basis of the original purchase price.

8 Sec. 13. 36 MRSA §1760, sub-§27, as amended by
9 PL 1979, c. 687, §7, is further amended to read:

10 27. Aircraft purchased by a nonresident. Air-
11 craft purchased by a nonresident and intended to be
12 driven or transported outside the State immediately
13 upon delivery by the seller. If any such craft are
14 registered for use in Maine within 6 12 months of the
15 date of purchase, the person seeking registration
16 shall be liable for use tax on the basis of the origi-
17 nal purchase price.

18 Sec. 14. 36 MRSA §1760, sub-§48, as enacted by
19 PL 1985, c. 477, §1 and c. 504, §2, is repealed and
20 the following enacted in its place:

21 48. Scheduled airlines. The sale or lease of an
22 aircraft, or replacement or repair parts of an air-
23 craft, used by a scheduled airline, based in this
24 State, and which is regularly used in the performance
25 of service under the regulations of the Civil Aero-
26 navitics Board, Part 298. This subsection is repealed
27 on July 1, 1987;

28 Sec. 15. 36 MRSA §1760, sub-§51, as enacted by
29 PL 1985, c. 417 and c. 473, is repealed and the fol-
30 lowing enacted in its place:

31 51. Veterans' Memorial Cemetery Associations.
32 Sales to incorporated nonprofit Veterans' Memorial
33 Cemetery Associations;

34 Sec. 16. 36 MRSA §1760, sub-§52 is enacted to
35 read:

36 52. Rail track materials. Railroad track materi-
37 als purchased and installed on railroad lines located
38 within the boundaries of the State. The track materi-
39 als shall include rail, ties, ballast, joint bars and

1 associated materials such as bolts, nuts, tie plates,
2 spikes, culverts, steel, concrete or stone, switch
3 stands, switch points, frogs, switch ties, bridge
4 ties and bridge steel.

5 In order for a taxpayer to qualify for an exemption
6 under this subsection, the taxpayer may not require
7 any landowner to pay any fee or charge for mainte-
8 nance or repair or to assume liability for crossings
9 or rights-of-way if the landowner was not required to
10 do so prior to July 1, 1981, and the taxpayer must
11 continue to maintain crossings and rights-of-way
12 which it was required to maintain on that date and
13 may not remove the crossings if there is any objec-
14 tion to their being removed; or

15 Sec. 17. 36 MRSA §1760, sub-§53 is enacted to
16 read:

17 53. Nonprofit volunteer search and rescue orga-
18 nizations. Sales to incorporated, nonprofit volunteer
19 search and rescue organizations.

20 Sec. 18. 36 MRSA c. 218, as amended, is re-
21 pealed.

22 Sec. 19. 36 MRSA §1959, as amended by PL 1981,
23 c. 470, Pt. A, §157, is repealed.

24 Sec. 20. 36 MRSA §1960 is repealed.

25 Sec. 21. 36 MRSA §1961, as amended by PL 1979,
26 c. 378, §16, is repealed.

27 Sec. 22. 36 MRSA §1962, as amended by PL 1983,
28 c. 480, Pt. A, §41, is repealed.

29 Sec. 23. 36 MRSA §1965, as enacted by PL 1975,
30 c. 765, §24, is repealed.

31 Sec. 24. 36 MRSA §2011, first ¶, as amended by
32 1981, c. 180, §§2 and 3, is further amended to read:

33 If the State Tax Assessor determines, upon writ-
34 ten application by a taxpayer or during the course of
35 an audit, that any tax has been paid more than once
36 or has been erroneously or illegally collected or

1 computed, he shall certify to the State Controller
2 the amount collected in excess of that legally due,
3 from whom it was collected or by whom paid, and that
4 amount shall be credited by the State Tax Assessor on
5 any taxes then due from the taxpayer and the balance
6 refunded to the taxpayer or his successor, adminis-
7 trators, executors or assigns, but no such credit or
8 refund may be allowed unless a written petition
9 therefor, stating the grounds upon which refund is
10 claimed, is filed with the State Tax Assessor or the
11 overpayment is discovered on audit within 3 years of
12 the date of overpayment. Interest, at the rate de-
13 termined pursuant to section 186, shall be paid from
14 the date of overpayment on any balance refunded pur-
15 suant to this chapter, except that no interest may be
16 paid with respect to the refunds provided by section
17 2013. At the election of the State Tax Assessor, un-
18 less the taxpayer specifically requests a cash re-
19 fund, the refund may be credited to the taxpayer's
20 sales and use tax account, but, in the case of a
21 credit, no further interest may accrue from the date
22 of that election. ~~The Tax Assessor shall have the~~
23 ~~right to cancel or abate any tax which has been ille-~~
24 ~~gally levied.~~ Nothing shall may authorize the taxpay-
25 er, or anyone acting in his behalf, to apply for a
26 refund of any amount assessed when administrative and
27 judicial review under section 151 has been completed.

28 Sec. 25. 36 MRSA §2013, sub-§1, ¶C, as amended
29 by PL 1985, c. 411, §1, and c. 447, §1, is repealed
30 and the following enacted in its place:

31 C. "Depreciable machinery and equipment" means
32 that part of the following machinery and equip-
33 ment for which depreciation is allowable under
34 the United States Internal Revenue Code:

35 (1) New or used machinery and equipment for
36 use directly and primarily in commercial ag-
37 ricultural production, including self-
38 propelled vehicles, but excluding motor ve-
39 hicles as defined in section 1752, subsec-
40 tion 7, attachments and equipment for the
41 production of field and orchard crops; new
42 or used machinery and equipment used in pro-
43 duction of milk and in animal husbandry and
44 production of livestock, including poultry;
45 or

1 (2) New or used watercraft used directly
2 and primarily for commercial fishing; and
3 nets, traps, cables, tackle and related
4 equipment necessary to the operation of a
5 commercial fishing venture, but excluding
6 motor vehicles as defined in section 1752,
7 subsection 7.

8 Sec. 26. 36 MRSA §2013, sub-§2, as amended by PL
9 1985, c. 447, §§2 and 3, is further amended to read:

10 2. Credit authorized. Any person, association
11 of persons, firm or corporation who purchases or
12 leases depreciable machinery or equipment for use in
13 commercial agricultural production or commercial
14 fishing shall be refunded the amount of sales tax
15 paid by him by presenting to the State Tax Assessor
16 evidence that the machinery or equipment complies
17 with the definitions of subsection 1.

18 Evidence required by the State Tax Assessor may in-
19 clude a copy or copies of that portion of the
20 purchaser's or lessee's most recent filing under the
21 United States Internal Revenue Code which indicates
22 that the purchaser or lessee is engaged in commercial
23 agricultural production or commercial fishing and
24 that the purchased machinery or equipment is depre-
25 ciable for those purposes or would be depreciable for
26 those purposes if owned by the lessee.

27 In the event that any piece of machinery or equipment
28 shall be only partially depreciable under the United
29 States Internal Revenue Code, any reimbursement of
30 the sales tax shall be prorated accordingly.

31 Application for refunds shall be filed with the State
32 Tax Assessor within 36 months of the date of purchase
33 or execution of the lease.

34 Sec. 27. 36 MRSA §2859, as enacted by PL 1981,
35 c. 711, §10, is repealed and the following enacted in
36 its place:

37 §2859. Estimated tax requirements

38 A mining company shall make payments of estimated
39 tax pursuant to section 5228, except that the esti-

1 mated tax liability is to be based on liability for
2 the mining excise tax rather than the income tax.

3 Sec. 28. 36 MRSA §§3231 to 3233, as amended by
4 PL 1985, c. 127, §1, are repealed.

5 Sec. 29. 36 MRSA §§3236 to 3239, as amended by
6 PL 1985, c. 127, §1, are repealed.

7 Sec. 30. 36 MRSA §3241, as amended by PL 1985,
8 c. 127, §1, is repealed.

9 Sec. 31. 36 MRSA §4641-C, sub-§1, as repealed
10 and replaced by PL 1977, c. 318, §1, is amended to
11 read:

12 1. Deeds to government property. Deeds to prop-
13 erty acquired transferred to or by the United States
14 of America, the State of Maine or any of their in-
15 strumentalities, agencies or subdivisions;

16 Sec. 32. 36 MRSA §5130, as enacted by PL 1977,
17 c. 686, §11, is amended to read:

18 §5130. Retirement credit

19 For any taxable year beginning on and after Janu-
20 ary 1, 1978, a resident may receive a credit against
21 state taxes due equal to 20% of any credit he re-
22 ceived for that year under the Internal Revenue Code,
23 section 37 Section 22, credit for the elderly exclu-
24 sive of any credit entitlement of a qualified indi-
25 vidual who has not attained the age of 65 before the
26 close of the taxable year. In no case ~~shall~~ may this
27 credit reduce the Maine income tax to less than zero.

28 Sec. 33. 36 MRSA §5203, as amended by PL 1979,
29 c. 615, §5, is repealed and the following enacted in
30 its place:

31 §5203. Minimum tax for tax preferences

32 1. Noncorporate. A tax is imposed, for each tax-
33 ible year, upon every noncorporate taxpayer required
34 to file a return under this Part, equal to the amount
35 by which 3% of the excess of that taxpayer's alterna-
36 tive minimum taxable income, as defined in the Inter-

1 nal Revenue Code of 1954, Section 55(b), as amended,
2 over the taxpayer's exemption amount, as defined in
3 the Internal Revenue Code of 1954, Section 55(f), as
4 amended, exceeds the taxpayer's liability for all
5 other taxes, except withholding taxes, under this
6 Part.

7 2. Corporate. A tax is imposed, for each taxable
8 year, upon every corporate taxpayer required to file
9 a return under this Part, equal to the amount by
10 which 2.25% of the sum of the taxpayer's items of tax
11 preference, as defined in the Internal Revenue Code
12 of 1954, Section 57, as amended, but excluding the
13 capital gain tax preference item in the Internal Re-
14 venue Code of 1954, Section 57, Subsection (a) (9)
15 (B), exceeds the greater of \$1,500 or that taxpayer's
16 liability for all other taxes, except withholding
17 taxes, under this Part.

18 3. Adjustment of tax. The tax imposed by this
19 section shall be adjusted proportionately, in accord-
20 ance with a rule promulgated by the State Tax Asses-
21 sor, if only a portion of the taxpayer's income is
22 taxable by the State.

23 Sec. 34. 36 MRSA §5228, as amended by PL 1979,
24 c. 615, §6, is repealed and the following enacted in
25 its place:

26 §5228. Estimated tax

27 1. Definitions. As used in this section, unless
28 the context otherwise indicates, the following terms
29 have the following meanings.

30 A. "Allowable credits" means the total amount of
31 any payments with regard to a taxpayer which have
32 been or will be paid to the Bureau of Taxation
33 prior to the date the payment against which they
34 are to be used as a credit is due and which are
35 available to offset any estimated tax liability.

36 B. "Estimated tax" means the amount which a per-
37 son estimates as the total amount of income tax
38 which will be due under this Part exclusive of a
39 withholder's liability for taxes withheld for a

1 taxable year less any allowable credits for that
2 taxable year.

3 C. "Period of underpayment" is the period of
4 time from the date the installment is due until
5 the underpayment is satisfied or until the tax
6 return to which the estimate installment applies
7 is due, whichever is less.

8 2. Requirement to pay estimated tax. Every per-
9 son subject to taxation under this Part shall make
10 payment of estimated tax as required by this Part in
11 such form as the State Tax Assessor may require. If
12 the person's income tax liability pursuant to this
13 Part exclusive of a withholder's liability for taxes
14 withheld reduced by allowable credits for the taxable
15 year is less than \$500 for the taxable year, the re-
16 quirement to make the payments is waived.

17 3. Amount of estimated tax to be paid. Every
18 person required to make payment of estimated tax is
19 liable for an estimated tax which is no less than the
20 smaller of the following:

21 A. An amount equal to the preceding year's State
22 income tax liability, if such preceding year was
23 a taxable year of 12 months; or

24 B. An amount equal to 80% of the income tax lia-
25 bility for the current year, for individuals or
26 an amount equal to 90% of the income tax liabili-
27 ty for the current year for corporations, except
28 that for farmers and fishermen this amount shall
29 be 66 2/3% of the tax liability for the current
30 year.

31 4. Due dates for estimated tax installments. For
32 individuals, an installment payment is due the 15th
33 day of the 4th, 6th, 9th and 13th month following the
34 beginning of their fiscal year, except that farmers
35 and fishermen have a single installment payment due
36 date of January 15th of the following taxable year.
37 For corporations, an installment payment is due the
38 15th day of the 4th, 6th, 9th and 12th month follow-
39 ing the beginning of their fiscal year.

1 5. Amount of installment. The amount of estimat-
2 ed tax to be paid in a taxable year by a taxpayer is
3 to be paid in installments by the dates established
4 in this Part. The amount of the estimated tax is to
5 be paid in 4 equal installments unless:

6 A. The taxpayer establishes by adequate record
7 the actual distribution of tax liability and al-
8 lowable credits, or both. In this case, the
9 amount of the installment payments should be ad-
10 justed accordingly and be determined in accord-
11 ance with the portion of the taxpayer's estimated
12 tax liability applicable to that portion of his
13 taxable year completed by the close of the month
14 preceding the installment's due date less esti-
15 imated tax payments already made for the taxable
16 year; or

17 B. The taxpayer is a farmer or fisherman in
18 which case a single installment is required.

19 A penalty shall accrue automatically on underpayments
20 of the required installment amount for the period of
21 underpayment at the rate provided pursuant to section
22 186. For cause, the State Tax Assessor may waive or
23 abate all or any part of the penalty.

24 6. Joint estimated tax payment. If they are eli-
25 gible to do so for federal tax purposes, a husband
26 and wife may jointly estimate tax as if they were one
27 taxpayer, in which case the liability with respect to
28 the estimated tax shall be joint and several. If
29 joint estimate payment is made, but husband and wife
30 elect to determine their taxes under this chapter
31 separately, the estimated tax for the year may be
32 treated as the estimated tax of either husband or
33 wife, or may be divided between them, as they may
34 elect.

35 7. Short taxable year. Payment of taxes for a
36 short taxable year shall be as provided in this sub-
37 section.

38 A. For an individual having a taxable year of
39 less than 12 months, the estimated tax is to be
40 paid in full by the 15th day of the month follow-
41 ing the end of the taxable year.

1 B. For a corporation having a taxable year of
2 less than 12 months the estimated tax is to be
3 paid in full by the 15th day of the last month of
4 the taxable year.

5 8. Installments paid in advance. At the
6 taxpayer's election, any installment of estimated tax
7 may be paid prior to the date prescribed for its pay-
8 ment.

9 9. Individual underpayment of 4th installment.
10 If, on or before January 31st of the following tax-
11 able year, an individual, not including a corpora-
12 tion, files a return for the taxable year of the re-
13 turn, then no penalty may be imposed with respect to
14 any underpayment of the 4th required installment for
15 the year.

16 10. Farmer or fisherman; underpayment. If an in-
17 dividual is a farmer or fisherman for any taxable
18 year, then no penalty may be imposed with respect to
19 any underpayment of the required installment of esti-
20 imated tax, if on or before March 1st of the following
21 taxable year, that individual files a return for the
22 taxable year and pays in full his tax liability for
23 the taxable year of the return.

24 Sec. 35. 36 MRSA §5229, as amended by PL 1979,
25 c. 615, §7, is repealed.

26 Sec. 36. 36 MRSA §5230, as amended by PL 1979,
27 c. 541, Pt. A, §240, is repealed.

28 Sec. 37. 36 MRSA §5253, sub-§2, as enacted by
29 P&SL 1969, c. 154, §F, is repealed.

30 Sec. 38. 36 MRSA §5254, as amended by PL 1981,
31 c. 371, §4, is further amended to read:

32 §5254. Employer's liability for withheld taxes

33 Every employer required to deduct and withhold
34 tax under this Part is hereby made liable for such
35 tax. For purposes of assessment and collection, any
36 amount required to be withheld and paid over to the
37 assessor, and any additions to tax, penalties and in-
38 terest with respect thereto, shall be considered the

1 tax of the employer. Any amount of tax actually de-
2 ducted and withheld under this Part shall be held to
3 be a special fund in trust for the assessor. No per-
4 son shall may have any right of action against an em-
5 ployer in respect to any money deducted and withheld
6 and paid over to the assessor in compliance or in in-
7 tended compliance with this Part.

8 Sec. 39. 36 MRSA §5274-A, as enacted by PL 1979,
9 c. 378, §43, is amended to read:

10 §5274-A. Penalty

11 Any person required to collect, truthfully ac-
12 count for and pay over the tax imposed by this Part,
13 who willfully fails to collect the tax, willfully
14 fails to truthfully account for ~~and~~ willfully fails
15 to pay over the tax or willfully attempts in any man-
16 ner to evade or defeat the tax or the payment there-
17 of, shall, in addition to other penalties provided by
18 law, be liable to a penalty equal to the total amount
19 of the tax evaded, not collected or not accounted for
20 and paid over. For purposes of this section, "person"
21 means an individual, corporation or partnership or an
22 officer or employee of any corporation, including a
23 dissolved corporation, or a member or employee of any
24 partnership who, as such officer, employee or member,
25 was, at the time of the violation, under a duty to
26 perform the act with respect to which the violation
27 occurred.

28 Sec. 40. 36 MRSA §5311, sub-§2, as amended by PL
29 1979, c. 378, §47, is repealed.

30 Sec. 41. 36 MRSA §5312, as amended by PL 1977,
31 c. 694, §733, is repealed.

32 Sec. 42. 36 MRSA §5312-A, as amended by PL 1977,
33 c. 694, §734, is repealed.

34 Sec. 43. 36 MRSA §5313, as amended by PL 1979,
35 c. 541, Pt. B, §51, is repealed.

36 Sec. 44. 36 MRSA §§5314 and 5315, as enacted by
37 P&SL 1969, c. 154, §F, are repealed.

38 Sec. 45. 36 MRSA §5331, as amended by PL 1983,
39 c. 480, Pt. A, §68, is repealed.

1 Sec. 46. 39 MRSA §57-C, sub-§2, as enacted by PL
2 1985, c. 372, Pt. A, §23, is amended to read:

3 2. Due date. The assessment imposed by this
4 section is due on or before the 60th last day of the
5 2nd month after the close of the calendar quarter.

6 Sec. 47. Effective date. Sections 25 and 26 of
7 this Act shall become effective for leases entered
8 into on or after July 1, 1986. Section 33 of this Act
9 shall become effective for tax years beginning on or
10 after January 1, 1985. Sections 27 and 34 of this Act
11 shall become effective for tax years beginning on or
12 after January 1, 1987.

13

FISCAL NOTE

14 It is estimated that enactment of this Act will
15 result in the following effect on revenues.

16		<u>1986-87</u>	<u>1987-88</u>
17	Section 5 (36 MRSA §176)		
18	General Fund	\$20,750	\$41,500
19	Local and Government Fund	<u>1,125</u>	<u>2,250</u>
20	Total	\$21,875	\$43,750
21	Section 7		
22	General Fund	\$90,000	\$100,000

1 STATEMENT OF FACT

2 Section 1 repeals current standard abatement pro-
3 vision, which is relocated, by section 2 of this
4 bill, into new the Maine Revised Statutes, Title 36,
5 section 142.

6 Section 2 enacts standard cancellation and abate-
7 ment provision.

8 Section 3 enacts standard provision for issuance
9 of 10-day demand letter.

10 Section 4 enacts standard provision for collec-
11 tion by warrant.

12 Section 5 enacts the Maine Revised Statutes, Ti-
13 tle 36, section 175, which is a standard tax lien
14 provision.

15 This section also enacts the Maine Revised Stat-
16 utes, Title 36, section 176, which responds to the
17 need for a more effective and expeditious means of
18 collecting sales, use and income taxes which are past
19 due, and as to which no further administrative or ju-
20 dicial review is available. Provision is made for a
21 levy power vested in the State Tax Assessor, permit-
22 ting him to appropriate certain liquid assets of de-
23 linquent taxpayers in order to satisfy their tax
24 debts. Specifically, the bill empowers the State Tax
25 Assessor to levy upon cash, bank accounts, accounts
26 receivable, life insurance and endowment contracts,
27 securities, other choses in action and rights to re-
28 ceive money which are in existence at the time of the
29 levy. It further permits him to garnish salaries and
30 wages on a continuing basis until the tax delinquency
31 is discharged.

32 Exercise of the levy power is carefully delimited
33 in order to ensure adequate due process protections.
34 In view of the fact that the taxes which may be col-
35 lected by means of a levy are finalized debts as to
36 which due opportunity for review has already been af-
37 forded, the due process protections provided in this
38 bill are considerably in excess of what is constitu-
39 tionally required.

1 Prior to exercising the levy power, the State Tax
2 Assessor must issue a demand letter. Only if the tax-
3 payer fails to make payment within 10 days of the de-
4 mand may his property be subjected to levy. Upon ex-
5 piration of the 10-day period, the levy may be ef-
6 fected by a physical seizure of property in the
7 taxpayer's possession, or by service of a notice of
8 levy upon a 3rd party. Special rules govern physical
9 seizure without written taxpayer consent, application
10 must be made for an ex parte court order; levies upon
11 salaries and wages, a portion of which is exempt; and
12 levies upon life insurance and endowment contracts. A
13 3rd party served with a notice of levy is required to
14 comply with its terms. Failure to do so without rea-
15 sonable cause results in liability for a penalty.

16 The State Tax Assessor may sell property levied
17 upon where necessary to enable him to apply the pro-
18 ceeds to the tax delinquency. The sale must be held
19 within 60 days of the date on which physical posses-
20 sion was obtained and must be conducted in a commer-
21 cially reasonable manner.

22 Third parties, claiming the property in which
23 they have an interest was wrongfully made the subject
24 of a notice of levy, are accorded a right of action
25 against the State Tax Assessor. Recovery in such an
26 action is limited to the value of property levied
27 upon and may not exceed the proceeds of a sale con-
28 ducted in accordance with the law.

29 This section also enacts the Maine Revised Stat-
30 utes, Title 36, section 177, which provides a stan-
31 dard trust fund provision.

32 Section 6 enacts a standard criminal provision.

33 Section 7 provides for an additional penalty of
34 \$25 or 25% of the tax, whichever is greater, for fi-
35 nal amounts due and not paid within 10 days of de-
36 mand. Taxpayers who withhold payment beyond the de-
37 mand notice occasion significant additional collec-
38 tion expenses. It is unfair to expect responsible
39 taxpayers to bear these expenses. Accordingly, the
40 recovery of at least a portion of additional expenses
41 should be effected from the delinquent taxpayers.
42 This provides an incentive for more timely payment.

1 The State Tax Assessor may waive or abate any penal-
2 ty.

3 Section 8 recognizes that recent changes in the
4 application of the sales and use tax to purchases by
5 industrial users included the substitution of "pro-
6 duction" for "manufacture" in other parts of the law.
7 The proposed change is necessary to reestablish con-
8 sistency in the wording of the definition of "retail
9 sale." Additionally, the interchange of the 9th and
10 10th sentences in this section provides a more order-
11 ly arrangement in the Maine Revised Statutes, Title
12 36, section 1752, subsection 11.

13 Section 9 establishes a procedure for the suspen-
14 sion of a sales tax registration certificate for a
15 registrant who fails to pay a finalized tax liabili-
16 ty. In order to avoid the continuing disregard of
17 sales tax law, it is essential to provide an expedi-
18 tious mechanism for discouraging continued disregard
19 of the law. Taxpayers who responsibly seek to dis-
20 charge finalized tax liabilities are not subject to
21 suspension.

22 Sections 10 to 13 recognize that the Legislature
23 recently increased from 6 to 12 months the term of
24 use outside of the State required for exemption from
25 use tax on property brought into the State. The pro-
26 posed changes are required to establish uniform stan-
27 dards for property immediately removed by nonresi-
28 dents.

29 Sections 14 to 17 involve the Maine Revised Stat-
30 utes, Title 36, section 1760, which currently con-
31 tains 2 subsections numbered 48 and 2 subsections
32 numbered 51. The proposed changes are necessary to
33 eliminate these inconsistencies.

34 Section 18 repeals current trust fund provisions
35 of sales and use tax law which are repealed, in part,
36 by the Maine Revised Statutes, Title 36, section 177,
37 enacted by section 5 of this bill, and, in part, by
38 the Maine Revised Statutes, Title 36, section 184,
39 enacted by section 6 of this bill.

40 Sections 19, 20 and 22 repeal current warrant
41 provisions of sales and use tax laws. Standard coun-

1 terpart is the Maine Revised Statutes, Title 36, sec-
2 tion 173, enacted by section 4 of this bill.

3 Sections 21 and 23 repeal current tax lien provi-
4 sions of sales and use tax laws. Standard counterpart
5 in the Maine Revised Statutes, Title 36, section 175,
6 enacted by section 5 of this bill.

7 Section 24 repeals cancellation and abatement
8 provision of sales and use tax laws. Standard coun-
9 terpart is the Maine Revised Statutes, Title 36, sec-
10 tion 142, enacted by section 2 of this bill.

11 Section 25 is necessary because Public Law 1985,
12 chapters 411 and 447 both amended the Maine Revised
13 Statutes, Title 36, section 2013. As chapter 447 did
14 not recognize the amendments enacted by chapter 411,
15 the proposed change is required to eliminate a con-
16 flict in the language of the Maine Revised Statutes,
17 Title 36, section 2013.

18 Section 26 provides changes which are required to
19 clarify an ambiguity on the requirements for eligi-
20 bility for refund of sales or use tax on depreciable
21 machinery and equipment for use in commercial fishing
22 or agricultural production and to ensure equitable
23 treatment for leased property.

24 Section 27 conforms the mining excise tax law to
25 the new estimate tax provisions contained in section
26 34 of this bill.

27 Section 28 repeals trust fund provisions of the
28 Special Fuel Tax Act. Standard counterpart in the
29 Maine Revised Statutes, Title 36, section 177, en-
30 acted by section 5 of this bill.

31 Sections 29 and 30 repeal warrant and lien provi-
32 sion of the Special Fuel Tax Act. Standard counter-
33 parts are the Maine Revised Statutes, Title 36, sec-
34 tions 173 and 175 enacted by sections 4 and 5 of this
35 bill.

36 Section 31 is intended to conform the real estate
37 transfer tax exemption provisions, the Maine Revised
38 Statutes, Title 36, section 4641-C with the exception
39 provisions of section 4641-D, which exclude any con-

1 veyance to or from the government from the require-
2 ment to file a declaration of value.

3 Section 32 recognizes that in 1984 federal law
4 was changed thus the reference to Internal Revenue
5 Code, Section 37, credit for the elderly should now
6 read Internal Revenue Code, Section 22. Since section
7 22 applies to both the elderly and disabled a limita-
8 tion excluding the disabled is required.

9 Section 33 changes the structure of the addition-
10 al tax provision of the income tax law. The amount of
11 the State minimum tax and alternative minimum tax
12 would no longer be imposed in addition to the regular
13 individual or corporate income tax. Instead, taxpay-
14 ers would be liable for the larger of a minimum tax,
15 alternative minimum tax or the regular income tax.
16 This provision more closely aligns the state law with
17 federal law in the imposition of the taxes.

18 Section 34 is intended to eliminate the require-
19 ment to file a declaration of estimated income tax
20 and otherwise simplify the state estimated income tax
21 law. Additionally, it extends the requirement for the
22 payment of estimate installments to apply to all tax
23 liability for a particular year as does the Internal
24 Revenue Code. The current exclusion for liabilities
25 of \$500 or less continues.

26 Sections 35 and 36 remove provisions in the cur-
27 rent estimated income tax law which are no longer re-
28 quired because of section 34 of this bill.

29 Sections 37 and 38 repeal current trust fund pro-
30 visions of income tax law. Standard counterpart is
31 the Maine Revised Statutes, Title 36, section 177,
32 enacted by section 5 of this bill.

33 Sections 39 and 45 result from a recent decision
34 entitled State of Maine v. John W. Lane, Jr., et al.,
35 495 A2d. 773 (Me. 1985), in which the Law Court held
36 that, as presently written, the Maine Revised Stat-
37 utes, Title 36, section 5331, does not penalize an
38 employer who deducts and withholds state income tax
39 from the wages of his employees and who "truthfully
40 accounts for" the state income tax funds withheld,
41 but intentionally fails to pay those employee income

1 tax funds over to the State.

2 Since the payment over to the State Tax Assessor
3 or employee income tax collected by an employer is a
4 primary purpose of the laws which create the obliga-
5 tion and penalize a violation, this bill makes it
6 clear that the intentional failure of an employer to
7 pay taxes actually withheld over to the designated
8 state agent is a crime under the Maine Revised Stat-
9 utes, Title 36, section 5331, even if the employer
10 files the proper forms.

11 The repeal of the Maine Revised Statutes, Title
12 36, section 5331, arises from the enactment of a uni-
13 form criminal penalty provision in section 6 of this
14 bill. The provisions of section 6 correct the defi-
15 ciency which arose in Lane.

16 A related law, the Maine Revised Statutes, Title
17 36, section 5274-A, provides for civil liability of
18 those required by law to collect, truthfully account
19 for and pay over the tax imposed by the Maine Revised
20 Statutes, Title 36, Part 8, Income Taxes. This civil
21 penalty section may be subject to an interpretation
22 similar to the Law Court's interpretation of the
23 Maine Revised Statutes, Title 36, section 5331 in
24 Lane. In order to clarify the existing law, to avoid
25 the loss of state revenue which may be occasioned by
26 such an interpretation and the secure civil liability
27 at least as broad as the United States Supreme Court
28 found in the comparable federal statutes (Slodov v.
29 United States, 436 U.S. 238 (1978), the bill makes it
30 clear that the willful failure to truthfully account
31 for or the willful failure to pay over the tax funds
32 by one required to do so results in civil liability
33 in the amount of the tax not truthfully accounted for
34 or not paid over. The existing civil penalty for
35 willful failure to collect the tax and for willful
36 attempts to evade or defeat the tax or the payment
37 thereof remains unchanged.

38 Section 40 repeals current 10-day demand provi-
39 sion of income tax law. Standard counterpart is the
40 Maine Revised Statutes, Title 36, section 171, en-
41 acted by section 3 of this bill.

