

# MAINE STATE LEGISLATURE

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(EMERGENCY)  
SECOND REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document

No. 2261

H.P. 1603

House of Representatives, March 24, 1986

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

Referred to the Committee on Taxation. Sent up for concurrence and  
ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Mayo of Thomaston.

STATE OF MAINE

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

AN ACT to Make Certain Changes and Improve  
the Equity of Maine Tax Law.

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

Whereas, the normal 90-day period may not termi-  
nate until after the beginning of the next fiscal  
year; and

Whereas, it is necessary to make these tax ad-  
justments as soon as possible to avoid lossess in po-  
tential revenue; and

Whereas, this additional revenue is necessary to  
fund the proposed Maine State Budget in fiscal year  
1986-87; and

Whereas, in the judgment of the Legislature,  
these facts create an emergency within the meaning of

1 the Constitution of Maine and require the following  
2 legislation as immediately necessary for the preser-  
3 vation of the public peace, health and safety; now,  
4 therefore,

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

7 Sec. 1. 36 MRSA §1752, sub-§3-A is enacted to  
8 read:

9 3-A. Food products. "Food products" except as  
10 otherwise provided, includes cereals and cereal  
11 products; milk and milk products, other than candy  
12 and confectionery, but including ice cream; oleomar-  
13 garine; meat and meat products; fish and fish  
14 products; eggs and egg products; vegetables and vege-  
15 table products; fruit and fruit products, including  
16 pure fruit juices; spices, condiments and salt; sugar  
17 and sugar products other than candy and confection-  
18 ery; coffee and coffee substitutes; and tea, cocoa  
19 and cocoa products, other than candy and confection-  
20 ery.

21 "Food products" does not include spirituous, malt or  
22 vinous liquors; soft drinks, sodas or beverages such  
23 as are ordinarily dispensed at bars or soda fountains  
24 or in connection therewith; medicines, tonics, vita-  
25 mins and preparations in liquid, powdered, granular,  
26 tablet, capsule, lozenge or pill form, sold as die-  
27 tary supplements or adjuncts, except when sold on the  
28 prescription of a physician; and water, including  
29 mineral bottled and carbonated waters and ice.

30 Sec. 2. 36 MRSA §1752, sub-§5-A, as enacted by  
31 PL 1981, c. 163, §1, is repealed.

32 Sec. 3. 36 MRSA §1752, sub-§11, as amended by PL  
33 1985, c. 276, §2, is further amended to read:

34 11. Retail sale or sale at retail. "Retail  
35 sale" or "sale at retail" means any sale of tangible  
36 personal property, in the ordinary course of busi-  
37 ness, for consumption or use, or for any purpose oth-  
38 er than for resale, except resale as a casual sale,  
39 in the form of tangible personal property, any rental

1 of living quarters in any hotel, rooming house, tour-  
2 ist or trailer camp, any rental of automobiles on a  
3 short-term basis, other than rental to a person en-  
4 gaged in the business of renting automobiles, the  
5 sale of telephone or telegraph service and the sale  
6 of extended cable television service. The term "re-  
7 tail sale" or "sale at retail" includes conditional  
8 sales, installment lease sales, and any other trans-  
9 fer of tangible personal property when the title is  
10 retained as security for the payment of the purchase  
11 price and is intended to be transferred later. The  
12 term "retail sale" or "sale at retail" also means  
13 sale of products for internal human consumption to a  
14 person for resale through coin-operated vending ma-  
15 chines when sold to a retailer whose gross receipts  
16 from the retail sale of tangible personal property  
17 derived through sales from vending machines are more  
18 than 50% of his gross receipts, which tax shall be  
19 paid by the retailer to the State. The term "retail  
20 sale" or "sale at retail" does not include any sale  
21 by an executor or administrator in the settlement of  
22 an estate, unless such sale is made through a retail-  
23 er, or unless such sale is made in the continuation  
24 or operation of a business; nor does the term include  
25 any other isolated transaction in which any tangible  
26 personal property is sold, transferred, offered for  
27 sale or delivered by the owner of the property, such  
28 sale, transfer, offer for sale, or delivery not being  
29 made in the ordinary course of repeated and succes-  
30 sive transactions of a like character by such owner,  
31 such transactions being elsewhere sometimes referred  
32 to as "casual sales." "Casual sales" includes trans-  
33 actions by a civic, religious or fraternal organiza-  
34 tion, which is not a registered retailer, at bazaars,  
35 fairs, rummage sales, picnics or similar events but  
36 not exceeding 8 days in a calendar year. The sale by  
37 a registered retailer of tangible personal property,  
38 which that retailer has used in the course of his or  
39 its business, is not a casual sale and is a retail  
40 sale subject to taxation under this Part, if that  
41 property is of a like character to that sold in the  
42 ordinary course of repeated and successive transac-  
43 tions. "Casual sale" shall not include any transac-  
44 tion in which tangible personal property is sold,  
45 transferred or offered for sale by a representative  
46 for the owner's account when such representative is a  
47 registered retailer, in which event such registered

1 retailer shall have the same duties respecting such  
2 sale as if he had sold on his own account. "Retail  
3 sale" and "sale at retail" do not include the sale of  
4 tangible personal property which becomes an ingredi-  
5 ent or component part of, or which is consumed or de-  
6 stroyed or loses its identity directly and primarily  
7 in the production of, tangible personal property for  
8 later sale or lease, other than lease for use in this  
9 State, but shall include fuel and electricity but  
10 shall not include electricity separately metered and  
11 consumed in any electrolytic process for the manufac-  
12 ture of tangible personal property for later sale,  
13 nor any fuel oil or coal, the by-products from the  
14 burning of which become an ingredient or component  
15 part of tangible personal property for later sale.  
16 "Retail sale" and "sale at retail" do not include the  
17 sale, to a person engaged in the business of renting  
18 automobiles, of automobiles, or integral parts of au-  
19 tomobiles or accessories to automobiles, for rental  
20 or for use in an automobile rented, on a short-term  
21 basis. It shall be considered that tangible personal  
22 property is "consumed or destroyed" or "loses its  
23 identity" in such manufacture, if it has a normal  
24 physical life expectancy of less than one year as a  
25 usable item in the use to which it is applied. "Re-  
26 tail sale" or "sale at retail" do not include the  
27 sale of containers, boxes, crates, bags, cores,  
28 twines, tapes, bindings, wrappings, labels and other  
29 packing, packaging and shipping materials when sold  
30 to persons for use in packing, packaging or shipping  
31 tangible personal property sold by them or upon which  
32 they have performed the service of cleaning, press-  
33 ing, dyeing, washing, repairing or reconditioning in  
34 their regular course of business and which are trans-  
35 ferred to the possession of the purchaser of such  
36 tangible personal property.

37 Sec. 4. 36 MRSa §1760, sub-§3, as amended by PL  
38 1981, c. 163, §3, is repealed and the following en-  
39 acted in its place:

40 3. Food products. Sales of food products except:

41 A. Meals served on or off the premises of the  
42 retailer;

1        B. Drinks or food furnished, prepared or served  
2        for consumption at tables, chairs or counters, or  
3        from trays, glasses, dishes or other tableware  
4        provided by the retailer;

5        C. Those products which ordinarily are sold by  
6        the retailer for immediate consumption on or near  
7        the location of the retailer, even though the  
8        products are sold on a "take out" or "to go" or-  
9        der and are actually packaged or wrapped and  
10       taken from the premises;

11       D. Those made from a retail location from which  
12       food ordinarily is sold for consumption without  
13       further preparation or storage, even though the  
14       products are packaged or wrapped in bulk quanti-  
15       ties; and

16       E. Sales of heated food or drinks; sandwiches;  
17       ice cream or ice milk in a cone or cup, including  
18       sundaes, sodas, frappes and the like, ice cream  
19       or ice milk novelties and popsicles.

20       Sec. 5. 36 MRSA §1760, sub-§34, as repealed and  
21       replaced by PL 1981, c. 163, §4, is repealed.

22       Sec. 6. 36 MRSA §1760, sub-§41, as amended by PL  
23       1981, c. 705, Pt. K, is repealed.

24       Sec. 7. 36 MRSA §1760, sub-§48, as enacted by PL  
25       1985, c. 504, §2 and c. 477, §1, is repealed and the  
26       following enacted in its place:

27       48. Rail track materials. Railroad track mate-  
28       rials purchased and installed on railroad lines lo-  
29       cated within the boundaries of the State. The track  
30       materials shall include rail, ties, ballast, joint  
31       bars and associated materials such as bolts, nuts,  
32       tie plates, spikes, culverts, steel, concrete or  
33       stone, switch stands, switch points, frogs, switch  
34       ties, bridge ties and bridge steel.

35       In order for a taxpayer to qualify for an exemption  
36       under this subsection, the taxpayer may not require  
37       any landowner to pay any fee or charge for mainte-  
38       nance or repair or to assume liability for crossings  
39       or rights-of-way if the landowner was not required to

1 do so prior to July 1, 1981, and the taxpayer must  
2 continue to maintain crossings and rights-of-way  
3 which it was required to maintain on that date and  
4 may not remove the crossings if there is any objec-  
5 tion to their being removed.

6       Sec. 8. 36 MRSA §2511, as amended by PL 1983, c.  
7 479, §1, is repealed.

8       Sec. 9. 36 MRSA §2512, as repealed and replaced  
9 by PL 1973, c. 727, §3, is amended to read:

10 §2512. Annual returns to Superintendent of Insurance

11       Every domestic life insurance company shall in-  
12 clude in its annual return to the Superintendent of  
13 Insurance a statement of the amount of premiums and  
14 annuity considerations liable to taxation as provided  
15 in section ~~2511~~ 2513, and of the real estate held by  
16 it on the 31st day of the previous December, showing  
17 in detail the amount of all premiums including annui-  
18 ty considerations whether in cash or notes absolutely  
19 payable, received by ~~said~~ the company from residents  
20 of this State during the preceding calendar year and  
21 all dividends paid to policyholders in this State on  
22 account of ~~said~~ the premiums or annuity considera-  
23 tions as required by blanks furnished by the superin-  
24 tendent. The taxes provided by section ~~2511~~ 2513  
25 shall be paid as provided in section 2521-A, and ~~said~~  
26 this section and section 2518 shall be applicable  
27 thereto.

28       Sec. 10. 36 MRSA §2513, as amended by PL 1973,  
29 c. 727, §4, is further amended to read:

30 §2513. Tax on premiums and annuity considerations

31       Every insurance company or association which does  
32 business or collects premiums or assessments includ-  
33 ing annuity considerations in the State, except those  
34 mentioned in ~~sections 2511 and~~ section 2517, includ-  
35 ing surety companies and companies engaged in the  
36 business of credit insurance or title insurance,  
37 shall, for the privilege of doing business in this  
38 State, and in addition to any other taxes imposed for  
39 such privilege pay a tax upon all gross direct premi-  
40 ums including annuity considerations, whether in cash

1 or otherwise, on contracts written on risks located  
2 or resident in the State for insurance of life, annu-  
3 ity, fire, casualty and other risks at the rate of 2%  
4 a year.

5 Sec. 11. 36 MRSA §2514, as amended by PL 1975,  
6 c. 641, is further amended to read:

7 §2514. Applicability of provisions

8 Sections ~~2511~~, 2512 and 2513 shall not apply to  
9 the taxation of any annuity consideration on any an-  
10 nuity contract issued prior to August 1, 1943. Sec-  
11 tions ~~2511~~, 2512 and 2513 shall not apply to any pre-  
12 mium from an insurance contract, which premium is re-  
13 ceived prior to October 1, 1969, or any considera-  
14 tion, regardless of when received, from any retire-  
15 ment annuity contracts issued by an insurance or an-  
16 nuity company organized and operated without profit  
17 to any private shareholder or individual exclusively  
18 for the purpose of aiding nonproprietary educational  
19 and scientific institutions pursuant to a retirement  
20 program established under section 403 (b) of the  
21 United States Internal Revenue Code. Premiums or  
22 considerations received from life insurance policies  
23 or annuity contracts issued in connection with the  
24 funding of a pension, annuity or profit-sharing plan  
25 or individual retirement account or annuity qualified  
26 or exempt under sections 401, 403, 404, 408 or 501 of  
27 the United States Internal Revenue Code as now or  
28 hereafter amended or renumbered from time to time,  
29 shall be exempt from tax.

30 Sec. 12. 36 MRSA §2515 is amended to read:

31 §2515. Amount of tax

32 In determining the amount of tax due under ~~sec-~~  
33 ~~tions 2511 and section~~ 2513, there shall be deducted  
34 by each company from the full amount of gross direct  
35 premiums, the amount of all direct return premiums  
36 thereon, and all dividends paid to policyholders on  
37 direct premiums and the tax shall be computed by said  
38 companies or their agents.

39 Sec. 13. 36 MRSA §2523, sub-§1, as enacted by PL  
40 1983, c. 479, §3, is repealed and the following en-  
41 acted in its place:



1        1. Tax on insurance companies. Every insurance  
2 company or association which does business or col-  
3 lects premiums or assessments for workers' compensa-  
4 tion insurance in this State shall, for the privilege  
5 of doing business in this State and in addition to  
6 any other taxes imposed for that privilege, pay a tax  
7 of 2% upon all gross direct premiums written, whether  
8 in cash or in notes absolutely payable on contracts  
9 written on risks located or resident in the State for  
10 workers' compensation insurance, less return premiums  
11 thereon and less all dividends paid to policyholders.

12 The tax levied under this section is in lieu of the  
13 taxes levied under section 2513, insofar as those  
14 taxes are based on workers' compensation insurance  
15 premiums.

16        Sec. 14. 36 MRSA §3636, as amended by PL 1983,  
17 c. 480, Pt. A, §53, is repealed and the following en-  
18 acted in its place:

19        §3636. Settlement required

20        The tax on all property and interests in property  
21 coming to beneficiaries from the estate of a person  
22 whose date of death is prior to July 1, 1986, shall  
23 be due on March 30, 1987, or the date specified in  
24 section 3681, whichever comes first. The tax due  
25 shall be payable by the personal representative or  
26 trustee in office or, if there is no personal repre-  
27 sentative or trustee, by the person having an inter-  
28 est in the property. The tax due in the estate shall  
29 be based on the value of the property subject to tax  
30 as of June 30, 1986, or as compromised as provided by  
31 section 3635.

32        Sec. 15. 36 MRSA §5102, sub-§1-C is enacted to  
33 read:

34        1-C. Maine adjusted gross income. "Maine ad-  
35 justed gross income" has the following meanings.

36        A. "Maine adjusted gross income" means, for a  
37 resident individual, the federal adjusted gross  
38 income of that individual, as modified by section  
39 5122.

1       B. "Maine adjusted gross income" means, for a  
2       nonresident individual, that part of his federal  
3       adjusted gross income derived from sources within  
4       this State, as determined under section 5142.

5       Sec. 16. 36 MRSA §5102, sub-§6, as amended by PL  
6       1983, c. 842, §1, is further amended to read:

7       6. Corporation. "Corporation" means any business  
8       entity subject to income taxation as a corporation  
9       under the laws of the United States, excepting corpo-  
10      rations subject to tax under sections ~~2511~~ 2512 to  
11      2522 and section 5206.

12      Sec. 17. 36 MRSA §5111, first ¶, as repealed and  
13      replaced by PL 1985, c. 535, §14, is amended to read:

14      For tax years beginning on or after January 1,  
15      1985, a tax is imposed for each taxable year on the  
16      entire taxable income of every resident individual of  
17      this State ~~and on the taxable income of every nonres-~~  
18      ~~ident individual which is derived from sources within~~  
19      ~~this State.~~ The amount of the tax shall be determined  
20      in accordance with the following tables.

21      Sec. 18. 36 MRSA §5111, sub-§4 is enacted to  
22      read:

23      4. Nonresident individuals. A tax is imposed  
24      upon the Maine income of every nonresident individu-  
25      al. The amount of the tax shall be equal to the tax  
26      computed under this section and chapter 805 as if the  
27      nonresident were a resident, less applicable tax  
28      credits other than that provided by section 5127,  
29      subsection 1, and multiplied by the ratio of his  
30      Maine adjusted gross income, and defined in section  
31      5102, subsection 1-C, paragraph B, to his entire fed-  
32      eral adjusted gross income, as modified by section  
33      5122.

34      Sec. 19. 36 MRSA §5127, sub-§1, as repealed and  
35      replaced by PL 1983, c. 571, §22, is amended to read:

36      1. Income tax paid to other taxing jurisdiction.  
37      A resident individual is allowed a credit against the  
38      tax otherwise due under this Part for the amount of  
39      income tax imposed on him for the taxable year by an-

1 other state of the United States, a political subdi-  
2 vision thereof, the District of Columbia or any po-  
3 litical subdivision of a foreign country which is  
4 analogous to a state of the United States with re-  
5 spect to income derived from sources therein which is  
6 also subject to tax under this Part. The credit, for  
7 any of the specified taxing jurisdictions, shall not  
8 exceed the proportion of the tax otherwise due under  
9 this Part that the amount of the taxpayer's Maine ad-  
10 justed gross income derived from sources in that tax-  
11 ing jurisdiction bears to his entire Maine adjusted  
12 gross income ~~as modified by this Part~~; provided that,  
13 when a credit is claimed for taxes paid to both a  
14 state and a political subdivision thereof, the total  
15 credit allowable for those taxes shall not exceed the  
16 proportion of the tax otherwise due under this Part  
17 that the amount of the taxpayer's Maine adjusted  
18 gross income derived from sources in ~~that~~ the other  
19 state bears to his entire Maine adjusted gross income  
20 ~~as modified by this Part~~.

21 Sec. 20. 36 MRSA §5140, as enacted by P&SL 1969,  
22 c. 154, §F, is repealed.

23 Sec. 21. 36 MRSA §5141, as enacted by P&SL 1969,  
24 c. 154, §F, is repealed.

25 Sec. 22. 36 MRSA §5143-A, as amended by PL 1983,  
26 c. 3, §4, is repealed.

27 Sec. 23. 36 MRSA §5144-A, as enacted by PL 1979,  
28 c. 711, Pt. H, §4, is repealed.

29 Sec. 24. 36 MRSA §5145, as amended by PL 1979,  
30 c. 711, Pt. H, §5, is repealed.

31 Sec. 25. 36 MRSA §5146, as enacted by PL 1977,  
32 c. 424, §2, is repealed.

33 Sec. 26. 36 MRSA §5160, as enacted by P&SL 1969,  
34 c. 154, §F, is repealed and the following enacted in  
35 its place:

36 §5160. Imposition of tax

37 The tax is imposed, at the rates provided by sec-  
38 tion 5111 for resident individuals, upon the taxable

1 income of estates and trust. The tax shall be paid by  
2 the fiduciary.

3       Sec. 27. 36 MRSA §5161, as enacted by P&SL 1969,  
4 c. 154, §F, is repealed.

5       Sec. 28. 36 MRSA §5166, as enacted by P&SL 1969,  
6 c. 154, §F, is repealed.

7       Sec. 29. 36 MRSA §5177, as enacted by P&SL 1969,  
8 c. 154, §F, is repealed.

9       Sec. 30. 36 MRSA §5192, sub-§2, as enacted by  
10 P&SL 1969, c. 154, §F, is amended to read:

11       2. Itemized deductions. If a nonresident partner  
12 of any partnership elects to itemize his deductions  
13 in determining his ~~taxable income in tax liability to~~  
14 this State, there shall be attributed to him his dis-  
15 tributive share of partnership items of deduction  
16 from federal adjusted gross income ~~which are deduct-~~  
17 ~~ible by him under section 5144.~~

18       Sec. 31. 36 MRSA §5214-A is enacted to read:

19       §5214-A. Credit to beneficiary for accumulation dis-  
20 tribution

21       1. General. A beneficiary of a trust whose ad-  
22 justed gross income includes all or part of an accu-  
23 mulation distribution by such trust, as defined in  
24 the United States Internal Revenue Code, Section 665,  
25 or its equivalent, shall be allowed a credit against  
26 the tax otherwise due under this Part for all or a  
27 proportionate part of any tax paid by the trust under  
28 this Part for any preceding taxable year which would  
29 not have been payable if the trust had in fact made  
30 distribution to its beneficiaries at the times and in  
31 the amounts specified in the United States Internal  
32 Revenue Code, Section 666, or its equivalent.

33       2. Limitation on credit. The credit under this  
34 section shall not reduce the tax otherwise due from  
35 the beneficiary under this Part to an amount less  
36 than would have been due if the accumulation distri-  
37 bution or his part of the accumulation distribution  
38 were excluded from his adjusted gross income.

1       Sec. 32. 36 MRSA §5220, first ¶, as enacted by  
2 P&SL 1969, c. 154, §7, is amended to read:

3       An income tax return with respect to the tax im-  
4 posed by this Part shall be made , on such forms as  
5 may be required by the State Tax Assessor, by the  
6 following:

7       Sec. 33. 36 MRSA §5220, sub-§2, as amended by PL  
8 1979, c. 711, Pt. H, §6, is further amended to read:

9       2. Nonresident individuals. Every nonresident  
10 individual who has ~~taxable~~ income for the year from  
11 sources within this State: :

12       A. Who has adjusted gross income from sources in  
13 this State of more than \$1,000 if single and  
14 \$2,000 if married; or

15       B. Who having attained the age of 65 before the  
16 close of his taxable year has adjusted gross in-  
17 come from sources within this State of more than  
18 \$2,000 if single and more than \$3,000 if married  
19 and his spouse has not yet attained the age of 65  
20 and more than \$4,000 if both have attained the  
21 age of 65 before the close of the taxable year;

22       Sec. 34. 36 MRSA §5221, sub-§1, ¶C, as enacted  
23 by P&SL 1969, c. 154, §F, is amended to read:

24       C. ~~¶¶~~ Except as provided in subsection 2, if the  
25 federal income tax liabilities of husband and  
26 wife, other than a husband and wife described in  
27 subsection 2, are determined on a joint federal  
28 return, they shall file a joint return under this  
29 Part and their tax liabilities shall be joint and  
30 several.

31       Sec. 35. 36 MRSA §5221, sub-§2, as enacted by  
32 P&SL 1969, c. 154, §F, is repealed and the following  
33 enacted in its place:

34       2. Nonresidents. If both husband and wife are  
35 nonresidents and one has no Maine-source income, the  
36 spouse having Maine-source income shall file a sepa-  
37 rate Maine nonresident income tax return, as a single  
38 individual, in which event his tax liability shall be

1 separate; but they may elect to determine their joint  
2 taxable income as nonresidents, in which case their  
3 liabilities shall be joint and several.

4 If either husband or wife is a resident and the other  
5 is a nonresident, they shall file separate Maine in-  
6 come tax returns as single individuals, in which  
7 event their tax liabilities shall be separate; but  
8 they may elect to determine their joint taxable in-  
9 come as if both were residents and, in that case,  
10 their liabilities shall be joint and several.

11       Sec. 36. 36 MRSA §5224-A, as enacted by PL 1979,  
12 c. 711, Pt. H, §8, is repealed and the following en-  
13 acted in its place:

14 §5224-A. Return of part-year resident

15       If an individual changes his status as a resident  
16 individual or nonresident individual during his tax-  
17 able year, he shall file a nonresident return pursu-  
18 ant to section 5220, subsection 2. His tax shall be  
19 computed, pursuant to section 5111, subsection 4, as  
20 if he were a nonresident individual, except that the  
21 numerator of the apportionment ratio shall be com-  
22 prised of his Maine adjusted gross income, as defined  
23 in section 5102, subsection 1-C, paragraph A, for the  
24 portion of the taxable year during which he was a  
25 resident individual, plus his Maine adjusted gross  
26 income as defined in section 5102, subsection 1-C,  
27 paragraph B, for the portion of the taxable year dur-  
28 ing which he was a nonresident individual. The part-  
29 year resident shall also be entitled to the credit  
30 provided by section 5127, subsection 1, computed as  
31 if the individual's Maine adjusted gross income for  
32 the entire year were comprised only of that portion  
33 which is attributed to the portion of the year during  
34 which he was a resident individual.

35       Emergency clause. In view of the emergency cited  
36 in the preamble, this Act shall take effect on April  
37 1, 1986, except that sections 15 and 17 to 36 shall  
38 apply to tax years beginning on or after January 1,  
39 1986, and except that sections 17 and 18 shall take  
40 effect 90 days after adjournment of the Legislature  
41 and shall apply to tax years beginning on or after  
42 January 1, 1986.

1

## FISCAL NOTE

		<u>1985-86</u>		<u>1986-87</u>	
		G.F.	L.G.F.	G.F.	L.G.F.
Sections 1 and 4	(modify food products exemption in sales tax)	\$107,500	\$ 5,825	\$ 650,000	\$ 35,000
Sections 2, 3 and 5	(repeal vending machines sales tax exemption)	154,000	8,325	925,000	50,000
Section 6	(repeal exemption of instrumentalities of interstate commerce)	250,000	13,300	1,500,000	80,000
Section 7	(repeal exemption of aircraft leases and repair parts)	40,000	2,150	261,000	14,000
Sections 8 to 13 and 13	(increase insurance premiums tax rate to 2%)	--	--	1,420,000	--
Section 14	(require settlement of estates)	--	--	500,000	--
Sections 15 and 17 to 18	(modify nonresident income tax computation)	--	--	3,320,000	180,000
TOTAL		\$511,500	\$27,450	\$8,315,000	\$345,000

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## STATEMENT OF FACT

Sections 1 and 4 of this bill are intended to improve the equity of sales tax as it relates to food products. Section 1 simply establishes a definition for food products within the definition section of the sales tax law. The definition is equivalent to the language which is repealed by section 4 and is currently placed in the exemption section of the law. Section 4, after the deletion of the food products definition, restates the existing exceptions to the food products exemption and adds 2 more. The first of these new exceptions to exemption is for food products sold from a retail location which is considered a restaurant, in as much as most of the food

1 products it sells are of a type ordinarily sold for  
2 consumption without further preparation or storage.  
3 The 2nd exception provides that prepared goods ready  
4 for consumption consisting of heated food or drinks,  
5 sandwiches and ice cream products are taxable  
6 wherever sold.

7 Sections 2, 3 and 5 repeal the current sales tax  
8 exemption on products for internal human consumption  
9 sold through coin-operated vending machines by a per-  
10 son, 50% of whose gross receipts from the retail sale  
11 of tangible personal property are derived through  
12 vending machines. This will result in applying the  
13 sales tax to vending machine sales rather than sub-  
14 jecting the vender retailers to a "use tax" as is now  
15 the case. Vending machine sales will return to the  
16 same tax reporting basis as other taxable retail  
17 sales.

18 Section 6 repeals the exemption of certain in-  
19 strumentalities of interstate or foreign commerce.  
20 At the time this exemption was enacted in 1980, the  
21 commerce clause was believed to prohibit imposition  
22 of a use tax upon the use of tangible personal prop-  
23 erty as an instrumentality of interstate commerce.  
24 Accordingly, a purchaser of tangible personal prop-  
25 erty intended to be used as an instrumentality of in-  
26 terstate commerce may avoid Maine sales and use tax  
27 by taking delivery of that property outside the State  
28 and by causing that property to begin to be used as  
29 an instrumentality of interstate commerce, ordinarily  
30 by carrying a bona fide payload, prior to its initial  
31 entry into Maine. The Maine Revised Statutes, Title  
32 36, section 1760, subsection 41, was enacted to allow  
33 purchasers to take delivery of vehicles in Maine and  
34 still qualify for exemption, provided that the prop-  
35 erty was placed into use as an instrumentality of in-  
36 terstate commerce within a short time after its pur-  
37 chase.

38 Now, court cases in other jurisdictions indicate  
39 that the United States Constitution does not prohibit  
40 taxation based upon the use of tangible personal  
41 property as an instrumentality of interstate com-  
42 merce. Consequently, the Maine Revised Statutes, Ti-  
43 tle 36, section 1760, subsection 41, which originally  
44 was intended to be a slight expansion of a constitu-



tionally required exemption, now is the only basis for an exemption with significant financial and equitable consequences. This exemption benefits only those purchasers who themselves use the property as an instrumentality of interstate commerce. It does not apply to transportation businesses which are primarily intrastate, nor does it provide an exemption to purchasers who lease the property to others who engage in interstate commerce, including those who operate under someone else's ICC authority.

Section 7 repeals the sales and use tax exemption for aircraft and repair parts which was intended to resolve the disparity between aircraft which are purchased and those which are leased and encourage repairs to be made in Maine. With the repeal of the interstate commerce exemption, it no longer is appropriate that aircraft be subject to tax exemption.

Sections 8 to 13 and 16 will modify the Insurance Premium Tax so that a 2% tax rate is levied on both domestic and foreign insurance companies with a reciprocal provision against foreign insurance companies. Currently the law provides for a 1% rate on domestic companies and a 2% rate on foreign companies.

Section 14 is intended to require the settlement of estates in which the inheritance tax has not been paid because the present value of certain interests is unknown. Since the inheritance tax expires on July 1, 1986, it seems reasonable to require the settlement of these outstanding estates by March 30, 1987.

Sections 15 and 17 to 36 will change the basis on which the Maine individual income tax is computed for nonresidents. Current law applies the individual income tax rates to the Maine source income of nonresidents after subtracting the prorated personal exemptions and deductions. In order that the nonresident tax be determined in a fashion logically similar to residents, the bill makes certain changes. A nonresident will compute a tax based on his entire federal adjusted gross income with Maine adjustments, taking full advantage of any credits available to a Maine resident. He will then reduce the tax by application of a fraction determined by dividing his Maine source income by his total income. Nonresidents will not be

1     allowed to claim a tax credit for income taxes paid  
2     to another tax jurisdiction since they are not being  
3     taxed on income earned outside Maine. Several other  
4     states, including California, Minnesota, Missouri,  
5     Utah and Vermont prorate tax liability in a similar  
6     fashion.

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