(EMERGENCY)
SECOND REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document **No. 2310**

H.P. 1638 House of Representatives, April 1, 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 Cashman of Old Town.

Cosponsored by Representative Mayo of Thomaston and Senator Twitchell of Oxford.

STATE OF MAINE

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

AN ACT to Make Certain Revisions in the Maine Tax Laws and Appropriations from the General Fund.

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

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

Whereas, it is necessary to make these tax adjustments as soon as possible to avoid losses in potential 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 the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 36 MRSA §1752, sub-§2-C is enacted to read:

2-C. Fabrication services. "Fabrication services" means the production, fabrication or processing of tangible personal property, including, but not limited to, computer programming, for a consideration for consumers who furnish, either directly or indirectly, the materials used in the production, fabrication or processing.

Sec. 2. 36 MRSA §1752, sub-§18-A, as enacted by PL 1965, c. 362, §4, is repealed and the following enacted in its place:

18-A. Telephone or telegraph service. "Telephone or telegraph service" means all state telecommunications or telegraph service, including installation or use of telecommunication or telegraphic equipment for transmissions which, at a minimum, originate or terminate in the State and are charged to a telephone number, service or customer located in the State. "Telecommunications and telegraphic equipment" means any interactive communications device, system or process for transmitting or receiving electromagnetic signals and capable of exchanging audio, data base or textual information. "Telephone or telegraph service" does not include directory advertising service or sales of telephone or telegraph service used in subsequent provision of telephone or telegraph service by a person regulated by the Public Utilities Commission or the Federal Communications Commission.

Sec. 3. 36 MRSA §1811, first ¶, as amended by PL 1983, c. 859, Pt. M, §§7 and 13, is further amended to read:

A tax is imposed at the rate of 5% on the value of all tangible personal property, on telephone and telegraph service ~~and~~, on extended cable television service ~~sold at retail in this State~~, on fabrication services ~~and~~, upon ~~the rental charged for living quarters in hotels, rooming houses, tourist or trailer camps and~~ the rental charged for automobiles rented on a short-term basis, other than a rental charged to a person engaged in the business of renting automobiles, and at the rate of 7% on the value of the rental charged for living quarters in hotels, rooming houses, tourist or trailer camps, sold at retail in this State and measured by the sale price, except as in chapters 211 to 225 provided. Retailers shall pay such tax at the time and in the manner provided, and it shall be in addition to all other taxes.

Sec. 4. 36 MRSA §1812, as amended by PL 1969, c. 295, §3, is repealed and the following enacted in its place:

§1812. Adding tax to sale price

Every retailer shall add the sales tax imposed by chapters 211 to 225, or the average equivalent of that tax, to his sale price, except as otherwise provided, and when added the tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid and shall be recoverable at law in the same manner as the purchase price. When the sale price shall involve a fraction of a dollar, the tax shall be added to the sale price upon the following schedules:

A. If the tax rate is 5%:

Amount of Sale Price	Amount of Tax
$0.01 to $0.10, inclusive	0¢
.11 to .20, inclusive	1¢
.21 to .40, inclusive	2¢
.41 to .60, inclusive	3¢
.61 to .80, inclusive	4¢
.81 to 1.00, inclusive	5¢

B. If the tax rate is 7%:

Amount of Sale Price	Amount of Tax
$0.01 to $0.07, inclusive	0¢
.08 to .21, inclusive	1¢
.22 to .35, inclusive	2¢
.36 to .49, inclusive	3¢
.50 to .64, inclusive	4¢
.65 to .78, inclusive	5¢
.79 to .92, inclusive	6¢
.93 to 1.00, inclusive	7¢

When the sale price exceeds $1, the tax to be added to the price shall be the scheduled amount for each whole dollar plus the scheduled amount for each fractional part of $1.

When several purchases are made together and at the same time, the tax shall be computed on the total amount of the several items, except that purchases taxed at 5% and 7% shall be separately totaled.

Breakage under this section shall be retained by the retailer as compensation for the collection.

Sec. 5. 36 MRSA §1861, as amended by PL 1969, c. 295, §4, is repealed and the following enacted in its place:

§1861. Purchase of tangible personal property

A tax is imposed on the storage, use or other consumption in this State of purchases, which if the sale occurred or had occurred in this State will be subject to tax under section 1764 or 1811. A tax is imposed at the rate provided in section 1811 on the sale price on these purchases. Every person so storing, using or otherwise consuming is liable for the tax until he has paid the tax or has taken a receipt from his seller, as duly authorized by the State Tax Assessor, showing that the seller has collected the sales or use tax, in which case the seller shall be liable for it. Retailers registered under section 1754 or 1756 shall collect the tax and make remittance to the State Tax Assessor. The amount of the tax payable by the purchaser shall be that provided in the case of sales taxes by section 1812. When tangible personal property purchased for resale is withdrawn from inventory by the retailer for his own use, use tax liability accrues at the date of withdrawal.

Sec. 6. 36 MRSA §1862 is amended to read:

§1862. Taxes paid in other jurisdictions

The use tax provisions of chapters 211 to 225 shall not apply in respect to the use, storage or consumption in this State of ~~tangible personal property purchased~~ purchases at retail sale outside the State where the purchaser has paid a sales or use tax equal to or greater than the amount imposed by chapters 211 to 225 in another taxing jurisdiction, the proof of payment of ~~such~~ the tax to be according to rules ~~and regulations~~ made by the State Tax Assessor. If the amount of tax paid in another taxing jurisdiction is not equal to or greater than the amount of tax imposed by chapters 211 to 225, then the purchaser shall pay to the State Tax Assessor an amount sufficient to make the tax paid in the other taxing jurisdiction and in this State equal to the amount imposed by chapters 211 to 225.

Sec. 7. 36 MRSA §5206, sub-§§1 and 2, as repealed and replaced by PL 1983, c. 842, §2, are amended to read:

1. Franchise tax on Maine net income. ~~Five-tenths~~ One percent of Maine net income for those taxable entities, as defined in section 5206-B, subsection 3.

2. Franchise tax on Maine assets. ~~Four~~ Eight cents per $1,000 of Maine assets, for those taxable entities, as defined in section 5206-B, subsection 2.

Sec. 8. 35 MRSA §5206-B, sub-§§1 to 4, as enacted by PL 1983, c. 842, §4, are repealed and the following enacted in their place:

1. Affiliated group. "Affiliated group" means a group of 2 or more corporations in which more than 50% of the voting stock of each member corporation is directly or indirectly owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member corporations.

2. Maine assets. "Maine assets" means, for any taxable year, a taxable entity's total end of year assets as required to be reported on United States Internal Revenue Service Form 1120, Schedule L.

3. Maine net income. "Maine net income" means, for any taxable year, a taxable entity's net income or loss per books, as required to be reported on the United States Internal Revenue Service Form 1120, Schedule M, Line 1 and allocated or apportioned to this State under chapter 821.

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

4. Taxable entity. "Taxable entity" means any financial institution, including any federally chartered financial institution authorized to do business in this State, except a credit union, and any service corporation or subsidiary as defined in Title 9-B, section 131 and any financial institution holding company as defined in Title 9-B, section 1011, except that control as defined in section 1011, shall mean ownership of more than 50% of the voting stock owned directly or indirectly, which is organized under the laws of this State or authorized to do business in this State, which at any time during the taxable year realized Maine net income or had Maine assets.

Sec. 9. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1986-87
FINANCE AND ADMINISTRATION, DEPARTMENT OF	
Bureau of Taxation	
Positions	(4)
Personal Services	$163,000

All Other	40,500
Capital Expenditures	45,500
Total	$249,000

Provides funding for one attorney, one certified public accountant, one computer systems analyst and one computer programmer analyst for tax enforcement

<u>CORRECTIONS, DEPARTMENT OF</u>

Fuel - Corrections	
All Other	($123,800)

<u>DEFENSE AND VETERANS' SERVICES, DEPARTMENT OF</u>

Military Training and Operations	
All Other	($67,250)

<u>FINANCE AND ADMINISTRATION, DEPARTMENT OF</u>

Buildings and Grounds Operations	
All Other	($156,500)

<u>MENTAL HEALTH AND MENTAL RETARDATION, DEPARTMENT OF</u>

Fuel for Institutions - Mental Health and Mental Retardation	
All Other	($152,450)

Deappropriates funds no longer necessary because of the drop in petroleum prices and the decrease in usage because of energy conservation throughout State Government.

TOTAL APPROPRIATION	($251,000)

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved, except that sections 1 to 8 of this Act shall take effect on June 1, 1986.

FISCAL NOTE

It is estimated that enactment of this Bill will result in the following effect on revenues assuming an effective date of June 1, 1986.

	1986-87
Sections 1, 3, 5 and 6 (Fabrication Services)	
General Fund	$2,000,000
Local Government Fund	107,500
Section 2 (Interstate communication service)	
General Fund	$5,700,000
Local Government Fund	300,000
Sections 3 and 4 (Lodgings)	
General Fund	$3,300,000
Local Government Fund	175,000
Sections 7 and 8 (Bank franchise)	
General Fund	$ 949,000
Local Government Fund	51,000

Section 9 (Enforcement)

The requirement for the appropriation of $249,000 in fiscal year 1986-87 is offset against an estimated increase in revenue shown below. This increased revenue results from increased enforcement efficiency and from the additional resources utilized in this area.

1986-87

General Fund	$1,250,000
Local Government Fund	67,000

STATEMENT OF FACT

Sections 1, 3, 5 and 6 of this bill provide for the enactment of a sales and use tax on fabrication services.

There is a weakness in current law which exempts from sales or use tax certain fabrication and production labor when contractual arrangements are made to pass title to the raw materials before fabrication or production services occur. This involves fabrication of structural steel, production of computer programs, video tapes, printing, as well as other types of tangible personal property which is produced on special order. If this bill is not enacted, erosion of the sales tax base will continue, resulting in loss of current revenue by several million dollars per year.

Section 2 of this bill provides for the sales taxation of certain interstate communication services. Under present law, sales tax is applied to local telephone and telegraph service and intrastate charges. This tax was enacted in 1965, at which time it was believed that the United States Constitution prohibited the taxation of interstate communication charges; accordingly, an exemption was provided. Recent court decisions now indicate that a tax on these charges is permissible and other states have extended their sales tax on telephone service to interstate toll calls. Thus, the definition of telephone and telegraph services is amended to impose sales tax on interstate telephone and telegraph service. The definition of telephone and telegraph service is also amended to take into account the technological changes that are occurring in the communications industry.

Sections 3 and 4 of this bill provide for increasing the sales tax on lodging from 5% to 7%.

The sales tax on transient rentals was enacted in 1959. The last sales tax increase was in 1969 when the rate was raised from 4 1/2% to 5%.

This change places Maine more in line with our neighbors. For example, New Hampshire has a tax of 7% on meals and lodgings; Massachusetts has a 5.7% state tax plus a 4% optional local tax for a combined rate of 9.7% on lodgings; and New Brunswick has an 11% tax on lodgings.

Section 7 doubles the tax rates of the bank franchise tax.

Section 8 brings all financial institutions and bank holding companies doing business in the State, except credit unions and their nonbank affiliates under the bank franchise tax while exempting them from the corporate income tax. It also makes clear that both single banks and unitary groups with interstate activities will apportion and allocate their income and asset bases for purposes of computing the tax.

Section 9 of this bill provides appropriation of $249,000, which is required to provide additional resources to the Bureau of Taxation for the enforcement of existing tax laws. Because of the substantial volume of existing enforcement actions, consisting of failure to pay and failure to file cases, the bureau needs more resources. The technical direction of enforcement activities dictates the elevation of the enforcement function in the bureau to a divisional level. Thus, one of these positions is to be that of Director of Enforcement. This position should be on par for pay purposes with other division directors within the bureau. The candidate should have a background in collections work or related tax administrative functions, or both, and preferably be an attorney. The 2nd position should be that of a systems analyst working on enforcement systems. Finally, the 2 remaining positions should be a certified public accountant and programmer analyst dedicated to improved enforcement systems including certain audit functions.

The capital expenditures request is to provide basic office equipment and for the acquisition of electronic data processing equipment to facilitate enforcement activities. The All Other request is for travel and administrative cost and for the purpose of purchasing contractual services involving enforcement activities and computer software.

As a result of declining oil prices on the open marketplace coupled with ongoing efforts throughout State Government to conserve energy usage, it is estimated that $500,000 of appropriated General Fund resources presently targeted for state agency and institutional heating oil can be reprogrammed for fiscal year 1986-87.

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