

MAINE STATE LEGISLATURE

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L.D. 2315
(Filing No. H- 700)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
112TH LEGISLATURE
SECOND REGULAR SESSION

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HOUSE AMENDMENT "**A**" to H.P. 1641, L.D. 2315,
Bill, "AN ACT Making Supplemental Appropriations from
the General Fund to Implement the Recommendations of
the Visiting Committee to the University of Maine and
for Other Purposes for the Fiscal Year Ending June
30, 1987."

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Amend the bill by striking out all of the title
and inserting and in its place the following:

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'AN ACT to Implement the Visiting Committee's Re-
port and to Provide the Necessary Funds for the Uni-
versity of Maine and the Proper Operation of Govern-
ment.'

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Further amend the bill by inserting after the en-
acting clause the following:

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

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2-C. Fabrication services. "Fabrication ser-
vices" means the production, fabrication or process-
ing of tangible personal property, for a considera-
tion for persons who furnish, either directly or in-
directly, the materials used in the production, fab-
rication or processing. It includes the production
of custom computer programming or the modification of
computer programs. "Fabrication services" does not
include the production, fabrication or processing of
tangible personal property if a sale to the consumer
of the tangible personal property so produced, fabri-
cated or processed would be exempt or otherwise not
subject to tax under chapters 211 to 225, or if the
services are purchased by an exempt entity.

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Sec. 2. 36 MRSA §1752, sub-§3-A is enacted to

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1 read:

2 3-A. Food products. "Food products" except as
3 otherwise provided, includes cereals and cereal
4 products; milk and milk products, other than candy
5 and confectionery, but including ice cream; oleomar-
6 garine; meat and meat products; fish and fish
7 products; eggs and egg products; vegetables and vege-
8 table products; fruit and fruit products, including
9 pure fruit juices; spices, condiments and salt; sugar
10 and sugar products other than candy and confection-
11 ery; coffee and coffee substitutes; and tea, cocoa
12 and cocoa products, other than candy and confection-
13 ery.

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

23 Sec. 3. 36 MRSA §1752, sub-§18-A, as enacted by
24 PL 1965, c. 362, §4, is repealed and the following
25 enacted in its place:

26 18-A. Telephone or telegraph service. "Telephone
27 or telegraph service" means all telecommunications or
28 telegraph service, including installation or use of
29 telecommunication or telegraphic equipment, but not
30 including telecommunications or telegraph service
31 originating or terminating outside this State.
32 "Telecommunications and telegraphic equipment" means
33 any 2-way interactive communications device, system
34 or process for transmitting or receiving electromag-
35 netic signals and capable of exchanging audio, data
36 base or textual information. Telecommunications ser-
37 vice includes access services provided by a local ex-
38 change carrier to an interstate or intrastate inter-

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1 exchange carrier. Notwithstanding subsection 11, a
2 sale of access services shall be considered a retail
3 sale. "Telephone or telegraph service" does not in-
4 clude directory advertising service.

5 Sec. 4. 36 MRSA §1760, sub-§3, as amended by PL
6 1981, c. 163, §3, is repealed and the following en-
7 acted in its place:

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

9 A. Meals served on or off the premises of the
10 retailer;

11 B. Drinks or food furnished, prepared or served
12 for consumption at tables, chairs or counters, or
13 from trays, glasses, dishes or other tableware
14 provided by the retailer;

15 C. Those products which ordinarily are sold by
16 the retailer for immediate consumption on or near
17 the location of the retailer even though the
18 products are sold on a "take out" or "to go" or-
19 der and are actually packaged or wrapped and
20 taken from the premises;

21 D. Those made from a retail location from which
22 food ordinarily is sold for consumption without
23 further preparation or storage, even though the
24 products are packaged or wrapped in bulk quanti-
25 ties; and

26 E. Sales of heated food or drinks; sandwiches;
27 ice cream or ice milk in a cone or cup, including
28 sundaes, sodas, frappes and the like, ice cream
29 or ice milk novelties and popsicles.

30 Sec. 5. 36 MRSA §1811, first ¶, as amended by PL
31 1983, c. 859, Pt. M, §§7 and 13, is further amended
32 to read:

33 A tax is imposed on retail sales at the rate of

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1 5% on the value of all tangible personal property, on
2 telephone and telegraph service and, on extended ca-
3 ble television service sold at retail in this State,
4 and on fabrication services and upon the rental
5 charged for living quarters in hotels, rooming
6 houses, tourist or trailer camps and the rental
7 charged for automobiles rented on a short-term basis,
8 other than a rental charged to a person engaged in
9 the business of renting automobiles, and at the rate
10 of 7% on the value of the rental charged for living
11 quarters in hotels, rooming houses, tourist or trail-
12 er camps, and the rental charged for automobiles
13 rented on a short-term basis, other than a rental
14 charged to a person engaged in the business of
15 renting automobiles measured by the sale price, ex-
16 cept as in chapters 211 to 225 provided. Retailers
17 shall pay such tax at the time and in the manner pro-
18 vided, and it shall be in addition to all other
19 taxes.

20 Sec. 6. 36 MRSA §1812, as amended by PL 1969, c.
21 295, §3, is repealed and the following enacted in its
22 place:

23 §1812. Adding tax to sale price

24 Every retailer shall add the sales tax imposed by
25 chapters 211 to 225, or the average equivalent of
26 that tax, to his sale price, except as otherwise pro-
27 vided, and when added the tax shall constitute a part
28 of the price, shall be a debt of the purchaser to the
29 retailer until paid and shall be recoverable at law
30 in the same manner as the purchase price. When the
31 sale price shall involve a fraction of a dollar, the
32 tax shall be added to the sale price upon the follow-
33 ing schedules:

34 A. If the tax rate is 5%:

35 <u>Amount of Sale Price</u>	<u>Amount of Tax</u>
36 <u>\$0.01 to \$0.10, inclusive</u>	<u>0¢</u>

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1	<u>.11 to .20, inclusive</u>	<u>1¢</u>
2	<u>.21 to .40, inclusive</u>	<u>2¢</u>
3	<u>.41 to .60, inclusive</u>	<u>3¢</u>
4	<u>.61 to .80, inclusive</u>	<u>4¢</u>
5	<u>.81 to 1.00, inclusive</u>	<u>5¢</u>

6 B. If the tax rate is 7%:

7	<u>Amount of Sale Price</u>	<u>Amount of Tax</u>
8	<u>\$0.01 to \$0.07, inclusive</u>	<u>0¢</u>
9	<u>.08 to .21, inclusive</u>	<u>1¢</u>
10	<u>.22 to .35, inclusive</u>	<u>2¢</u>
11	<u>.36 to .49, inclusive</u>	<u>3¢</u>
12	<u>.50 to .64, inclusive</u>	<u>4¢</u>
13	<u>.65 to .78, inclusive</u>	<u>5¢</u>
14	<u>.79 to .92, inclusive</u>	<u>6¢</u>
15	<u>.93 to 1.00, inclusive</u>	<u>7¢</u>

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

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

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

26 Sec. 7. 36 MRSA §1861, as amended by PL 1969, c.
27 295, §4, is repealed and the following enacted in its
28 place:

29 §1861. Purchase tangible personal property

30 A tax is imposed on the storage, use or other
31 consumption in this State of purchases, which if the
32 sale occurred or had occurred in this State will be
33 subject to tax under section 1764 or 1811. A tax is

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1 imposed at the rate provided in section 1811 on the
2 sale price on these purchases. Every person so stor-
3 ing, using or otherwise consuming is liable for the
4 tax until he has paid the tax or has taken a receipt
5 from his seller, as duly authorized by the State Tax
6 Assessor, showing that the seller has collected the
7 sales or use tax, in which case the seller shall be
8 liable for it. Retailers registered under section
9 1754 or 1756 shall collect the tax and make remit-
10 tance to the State Tax Assessor. The amount of the
11 tax payable by the purchaser shall be that provided
12 in the case of sales taxes by section 1812. When
13 tangible personal property purchased for resale is
14 withdrawn from inventory by the retailer for his own
15 use, use tax liability accrues at the date of with-
16 drawal.

17 Sec. 8. 36 MRSa §1862 is amended to read:

18 §1862. Taxes paid in other jurisdictions

19 The use tax provisions of chapters 211 to 225
20 shall not apply in respect to the use, storage or
21 consumption in this State of ~~tangible personal prop-~~
22 ~~erty~~ purchased purchases at retail sale outside the
23 State where the purchaser has paid a sales or use tax
24 equal to or greater than the amount imposed by chap-
25 ters 211 to 225 in another taxing jurisdiction, the
26 proof of payment of ~~such the~~ tax to be according to
27 rules and ~~regulations~~ made by the State Tax Assessor.
28 If the amount of tax paid in another taxing jurisdic-
29 tion is not equal to or greater than the amount of
30 tax imposed by chapters 211 to 225, then the purchas-
31 er shall pay to the State Tax Assessor an amount suf-
32 ficient to make the tax paid in the other taxing ju-
33 risdiction and in this State equal to the amount im-
34 posed by chapters 211 to 225.

35 Sec. 9. 36 MRSa §2511, as amended by PL 1983, c.
36 479, §1, is repealed.

37 Sec. 10. 36 MRSa §2512, as repealed and replaced

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1 by PL 1973, c. 727, §3, is amended to read:

2 §2512. Annual returns to Superintendent of Insurance

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

20 Sec. 11. 36 MRSA §2513, as amended by PL 1973,
21 c. 727, §4, is further amended to read:

22 §2513. Tax on premiums and annuity considerations

23 Every insurance company or association which does
24 business or collects premiums or assessments includ-
25 ing annuity considerations in the State, except those
26 mentioned in ~~sections 2511 and section~~ section 2517, includ-
27 ing surety companies and companies engaged in the
28 business of credit insurance or title insurance,
29 shall, for the privilege of doing business in this
30 State, and in addition to any other taxes imposed for
31 such privilege pay a tax upon all gross direct prem-
32 ums including annuity considerations, whether in cash
33 or otherwise, on contracts written on risks located
34 or resident in the State for insurance of life, annu-
35 ity, fire, casualty and other risks at the rate of 2%
36 a year.

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1 Sec. 12. 36 MRSA §2514, as amended by PL 1975,
2 c. 641, is further amended to read:

3 §2514. Applicability of provisions

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

26 Sec. 13. 36 MRSA §2515 is amended to read:

27 §2515. Amount of tax

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

35 Sec. 14. 36 MRSA §2523, sub-§1, as enacted by PL
36 1983, c. 479, §3, is repealed and the following en-

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1 acted in its place:

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

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

17 Sec. 15. 36 MRSA §3636, as amended by PL 1983,
18 c. 480, Pt. A, §53, is repealed and the following en-
19 acted in its place:

20 §3636. Settlement required

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

33 Sec. 16. 36 MRSA c. 704 is enacted to read:

34 CHAPTER 704

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1 TOBACCO PRODUCTS TAX

2 §4401. Definitions

3 As used in this chapter, unless the context oth-
4 erwise indicates, the following terms have the fol-
5 lowing meanings.

6 1. Business. "Business" means any trade, occu-
7 pation, activity or enterprise engaged in for the
8 purpose of selling or distributing tobacco products
9 in this State.

10 2. Distributor. "Distributor" means any person
11 engaged in the business of producing or manufacturing
12 tobacco products in this State for sale in this
13 State, any person engaged in the business of selling
14 tobacco products in this State who brings, or causes
15 to be brought, into this State any tobacco products
16 for sale to a retailer or any person engaged in the
17 business of selling tobacco products who ships or
18 transports tobacco products to retailers for sale in
19 this State.

20 3. Manufacturer. "Manufacturer" means a person
21 who manufactures and sells tobacco products.

22 4. Place of business. "Place of business" means
23 any place where tobacco products are sold or where
24 tobacco products are manufactured, stored, or kept
25 for the purpose of sale or consumption, including any
26 vessel, vehicle, airplane, train or vending machines.

27 5. Retailer. "Retailer" means any person en-
28 gaged in the business of selling tobacco products to
29 ultimate consumers.

30 6. Retail outlet. "Retail outlet" means a place
31 of business from which tobacco products are sold to
32 consumers. Vending machines shall be considered a
33 retail outlet.

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1 7. Sale. "Sale" means any transfer, exchange,
2 barter or gift in any manner or by any means whatso-
3 ever, for a consideration. It shall include a gift
4 for advertising by a person engaged in the business
5 of selling tobacco products.

6 8. Subjobber. "Subjobber" means son oth-
7 er than a manufacturer or distributor s from a
8 distributor tobacco products upon which imposed
9 by this chapter has been paid and sells th to per-
10 sons other than th ultimate consumers.

11 9. Tobacco products. "Tobacco products" means
12 cigars; cheroots; stogies; periques' granulated, plug
13 cut, crimp cut, ready rubbed, and other smoking to-
14 bacco; snuff; snuff flour; cavendish; plug and twist
15 tobacco; finecut and other chewing tobaccos; shorts;
16 refuse scraps, clippings, cuttings and sweepings of
17 tobacco; and other kinds and forms of tobacco, pre-
18 pared in such manner as to be suitable for chewing or
19 smoking in a pipe or otherwise, or both for chewing
20 and smoking; but shall not include tobacco products
21 which are subject to the tax provided by chapter 93.

22 10. Unclassified importer. "Unclassified im-
23 porter" means any person, firm, corporation or asso-
24 ciation within this State, other than a distributor,
25 as defined, who shall import, receive or acquire from
26 without the State, tobacco products for use or con-
27 sumption within the State.

28 11. Wholesale sales price. "Wholesale sales
29 price" means the established price for which a manu-
30 facturer sells tobacco products to a distributor, ex-
31 clusive of any discount or other reduction.

32 §4402. Licenses

33 Every person engaging in the business of selling
34 tobacco products as a distributor shall secure a li-
35 cense from the tax assessor before engaging in that
36 business. Every license application shall be made on

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1 a form prescribed by the tax assessor and shall state
2 the name and address of the applicant, address of his
3 principal place of business, and such other informa-
4 tion as the tax assessor may require for the proper
5 administration of this chapter. The application
6 shall be accompanied by a fee of \$25, except that
7 there shall be no fee required for distributors or
8 unclassified importers licensed under chapter 703. A
9 person without the State who ships or transports to-
10 bacco products to retailers in this State shall make
11 application as a distributor and be granted by the
12 tax assessor a license subject to all the provisions
13 of this chapter and agree, upon applying for a li-
14 cense, to submit his books, accounts and records to
15 examination by the Bureau of Taxation during reason-
16 able business hours, and to accept service of process
17 by mail when service is made in any proceeding in-
18 volving enforcement of this chapter.

19 Each unclassified importer before importing, re-
20 ceiving or acquiring tobacco products from without
21 the State shall secure a license from the tax asses-
22 sor. There shall be no fee for that license.

23 Each license issued shall expire on July 31st of
24 each year unless sooner revoked by the tax assessor.
25 The license shall be prominently displayed on the
26 premises covered by the license and no license may be
27 transferred to any other person.

28 The tax assessor may revoke or suspend the li-
29 cense or licenses of any person for violation of this
30 chapter applicable to the sale of tobacco products.
31 No license may be revoked, canceled or suspended un-
32 til after notice and hearing by the tax assessor.

33 \$4403. Tax on tobacco products

34 A tax is imposed on all tobacco products at the
35 rate of 25% of the wholesale sales price. The tax
36 shall be imposed at the time the distributor or un-
37 classed importer brings or causes to be brought

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1 into this State tobacco products that are for sale to
2 consumers or to retailers or for use or at the time
3 tobacco products are manufactured or fabricated in
4 this State for sale in this State.

5 The tax imposed on tobacco products does not ap-
6 ply to those products exported from this State or to
7 any tobacco products which under laws of the United
8 States may not be subject to taxation by this State.

9 §4404. Returns; payment of tax and penalty

10 Every distributor, or unclassified importer shall
11 on or before the last day of each month render, on
12 forms to be furnished by the tax assessor, a report
13 together with payment of the tax due under this chap-
14 ter to the tax assessor stating the quantity and the
15 wholesale sale price of all tobacco products held,
16 purchased, manufactured, brought in or caused to be
17 brought in from without the State or shipped or
18 transported to retailers within the State during the
19 preceding calendar month. Every distributor or un-
20 classified importer shall keep a complete and accu-
21 rate record at his principal place of business to
22 substantiate all receipts of tobacco products; this
23 record shall be preserved for a period of 2 years in
24 such manner as to insure permanency and accessibility
25 for inspection.

26 Such monthly reports shall contain such further
27 information as the tax assessor shall prescribe and
28 shall show a credit for any tobacco products exempted
29 as provided in section 4403. Records shall be main-
30 tained to substantiate the exemption. Tobacco
31 products previously taxed which are returned to a
32 manufacturer because the product has become unfit for
33 use of consumption or unsalable may be taken as a
34 credit on a subsequent return upon receipt of the
35 credit notice from the original supplier.

36 If the monthly report required by this chapter is
37 not filed, or payment is not rendered by the last day

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1 of the month the distributor or unclassified importer
2 shall be liable to a penalty of \$1 a day for each day
3 in arrears or 10% of the tax liability, whichever is
4 the greater, together with interest at the rate of 1%
5 per month or fraction thereof due on demand by the
6 tax assessor, and recoverable in a civil action. The
7 tax assessor may waive the penalty for cause.

8 §4405. The tax assessor may estimate liability

9 Whenever any distributor or unclassified importer
10 shall neglect or refuse to make and file any report
11 required by this chapter or shall file an incorrect
12 or fraudulent report, the tax assessor shall from such
13 information as he may obtain fix the amount of taxes,
14 penalties and interest payable and forthwith proceed
15 to collect the amount so fixed.

16 In any action or proceeding for collection of the
17 tobacco products tax, any penalties and interest im-
18 posed in connection with an assessment by the tax as-
19 essor of the tax, penalty or interest due the State
20 shall constitute prima facie evidence of the claim of
21 the State. The burden of proof shall be upon the
22 distributor or unclassified importer to show that the
23 assessment was incorrect and contrary to law.

24 §4406. Inspection of records; civil action for tax

25 The tax assessor or his duly authorized agents
26 shall have authority during reasonable business hours
27 to examine the records, books, papers and any other
28 records of the distributor, unclassified importer,
29 retailer or subjobber to verify the truth and accuracy
30 of any statement, report or return and whether the
31 tax imposed by this chapter has been fully paid.

32 The tax assessor shall have the power to recom-
33 mend legal proceedings by the Attorney General for
34 the purpose of ascertaining the amount due under this
35 chapter and enforcing the collection of tax, penal-
36 ties and interest thereof.

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1 §4407. Appeal procedure

2 Any person aggrieved by any action under this
3 chapter because of license suspension or revocation
4 or because of assessment of tax, penalty or interest
5 may apply to the tax assessor, in writing, within 10
6 days after notice of action is delivered or mailed,
7 requesting a hearing and setting forth the reason why
8 such hearing should be granted and the manner of re-
9 lief sought. The tax assessor shall promptly consid-
10 er such application and may grant or deny the hearing
11 request. If the hearing is denied the applicant
12 shall be promptly notified in writing of the reasons
13 for the denial; if it is granted the tax assessor
14 shall notify the applicant of the time and place
15 fixed for such hearing. After the hearing the tax
16 assessor may make such order as may appear just and
17 lawful and shall furnish a copy of the order to the
18 applicant. The tax assessor may, by notice in writ-
19 ing, at any time, order a hearing and require the
20 taxpayer or any other individual whom the tax asses-
21 sor believes to be in possession of information con-
22 cerning the manufacture, importation or sale of to-
23 bacco products which have escaped taxation to appear
24 before the tax assessor with any books, accounts, pa-
25 pers or other documents for examination relative
26 thereto.

27 Any person aggrieved because of any action or de-
28 cision of the tax assessor under this chapter may ap-
29 peal therefrom within 20 days to the Superior Court.
30 No less than 14 days before the review by the court
31 the appellant shall serve upon the tax assessor or
32 his duly authorized agent a copy of the petition
33 stating the reason for the appeal and notifying the
34 tax assessor when the appeal is to be heard. Pending
35 judgment of the court the decision of the tax asses-
36 sor shall remain in full force and effect.

37 §4408. Penalties; civil action for tax

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Any person who shall willfully make any false or fraudulent report or return required by this chapter, or who shall make any false statement in any claim or invoices presented to the tax assessor or who shall knowingly present to the tax assessor any claim or invoice containing any false statements, or who shall with intent to defraud, evade or violate any provisions of this chapter, or any rules duly made under this chapter, or who shall engage in the State in business as a distributor, without being the holder of a valid license to engage in that business commits a civil violation for which a fine not exceeding \$2,000 may be assessed, payable to the State. Whenever any person fails to pay any tax, interest or penalty due under this chapter within 15 days of demand, the Attorney General shall enforce payment thereof in a court of appropriate jurisdiction. In any civil action, records of the quantity of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the State or shipped or transported to retailers within this State for the period covered by the tax assessor's audit shall be prima facie evidence of such quantities sold, distributed or used during the period covered by the audit on which the tax with interest from the date when it was due, shall be computed and collected and for which amount, with costs, judgment shall be rendered.

§4409. Claims

The claims of the State for the sums due under this chapter shall be preferred and priority claims in the event of assignment, receivership or bankruptcy.

Sec. 17. 36 MRSA §5102, sub-§1-C is enacted to read:

1-C. Maine adjusted gross income. "Maine adjusted gross income" has the following meanings.

HOUSE AMENDMENT "A" to H.P. 1641, L.D. 2315

1 A. "Maine adjusted gross income" means, for a
2 resident individual, the federal adjusted gross
3 income of that individual, as modified by section
4 5122.

5 B. "Maine adjusted gross income" means, for a
6 nonresident individual, that part of his federal
7 adjusted gross income derived from sources within
8 this State, as determined under section 5142.

9 Sec. 18. 36 MRSA §5102, sub-§6, as amended by PL
10 1983, c. 842, §1, is further amended to read:

11 6. Corporation. "Corporation" means any business
12 entity subject to income taxation as a corporation
13 under the laws of the United States, excepting corpo-
14 rations subject to tax under sections ~~2511~~ 2512 to
15 2522 and section 5206.

16 Sec. 19. 36 MRSA §5111, first ¶, as repealed and
17 replaced by 1985, c. 535, §14, is amended to read:

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

25 Sec. 20. 36 MRSA §5111, sub-§4 is enacted to
26 read:

27 4. Nonresident individuals. A tax is imposed
28 upon the Maine income of every nonresident individu-
29 al. The amount of the tax shall be equal to the tax
30 computed under this section and chapter 805 as if the
31 nonresident were a resident, less applicable tax
32 credits other than that provided by section 5127,
33 subsection 1, and multiplied by the ratio of his
34 Maine adjusted gross income, as defined in section
35 5102, subsection 1-C, paragraph B, to his entire fed-

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1 eral adjusted gross income, as modified by section
2 5122.

3 Sec. 21. 36 MRSA §5127, sub-§1, as repealed and
4 replaced by PL 1983, c. 571, §22, is amended to read:

5 1. Income tax paid to other taxing jurisdiction.
6 A resident individual is allowed a credit against the
7 tax otherwise due under this Part for the amount of
8 income tax imposed on him for the taxable year by an-
9 other state of the United States, a political subdivi-
10 sion thereof, the District of Columbia or any po-
11 litical subdivision of a foreign country which is
12 analogous to a state of the United States with re-
13 spect to income derived from sources therein which is
14 also subject to tax under this Part. The credit, for
15 any of the specified taxing jurisdictions, shall not
16 exceed the proportion of the tax otherwise due under
17 this Part that the amount of the taxpayer's Maine ad-
18 justed gross income derived from sources in that tax-
19 ing jurisdiction bears to his entire Maine ~~ad-~~justed
20 gross income ~~as modified by this Part~~; provided that,
21 when a credit is claimed for taxes paid to both a
22 state and a political subdivision thereof, the total
23 credit allowable for those taxes shall not exceed the
24 proportion of the tax otherwise due under this Part
25 that the amount of the taxpayer's Maine adjusted
26 gross income derived from sources in ~~that~~ the other
27 state bears to his entire Maine adjusted gross income
28 ~~as modified by this Part.~~

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

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

33 Sec. 24. 36 MRSA §5143-A, as amended by PL 1983,
34 c. 3, §4, is repealed.

35 Sec. 25. 36 MRSA §5144-A, as enacted by PL 1979,
36 c. 711, Pt. H, §4, is repealed.

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1 Sec. 26. 36 MRSA §5145, as amended by PL 1979,
2 c. 711, Pt. H, §5, is repealed.

3 Sec. 27. 36 MRSA §5146, as enacted by PL 1977,
4 c. 424, §2, is repealed.

5 Sec. 28. 36 MRSA §5160, as enacted by P&SL 1969,
6 c. 154, §F, is repealed and the following enacted in
7 its place:

8 §5160. Imposition of tax

9 The tax is imposed, at the rates provided by sec-
10 tion 5111 for resident individuals, upon the taxable
11 income of estates and trust. The tax shall be paid by
12 the fiduciary.

13 Sec. 29. 36 MRSA §5161, as enacted by P&SL 1969,
14 c. 154, §F, is repealed.

15 Sec. 30. 36 MRSA §5166, as enacted by P&SL 1969,
16 c. 154, §F, is repealed.

17 Sec. 31. 36 MRSA §5177, as enacted by P&SL 1969,
18 c. 154, §F, is repealed.

19 Sec. 32. 36 MRSA §5192, sub-§2, as enacted by
20 P&SL 1969, c. 154, §F, is amended to read:

21 2. Itemized deductions. If a nonresident partner
22 of any partnership elects to itemize his deductions
23 in determining his ~~taxable income in tax liability to~~
24 this State, there shall be attributed to him his dis-
25 tributive share of partnership items of deduction
26 from federal adjusted gross income ~~which are deduct-~~
27 ~~ible by him under section 5144.~~

28 Sec. 33. 36 MRSA §5206, sub-§§1 and 2, as re-
29 pealed and replaced by PL 1983, c. 842, §2, are
30 amended to read:

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

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

8 Sec. 34. 36 MRSA §5206, sub-§4, as enacted by PL
9 1983, c. 842, §2, is repealed.

10 Sec. 35. 36 MRSA §5206-B, sub-§§1 to 4, as en-
11 acted by PL 1983, c. 842, §4, are repealed and the
12 following enacted in their place:

13 1. Affiliated group. "Affiliated group" means a
14 group of 2 or more corporations or taxable entities
15 in which more than 50% of the voting stock of each
16 member corporation or taxable entity is directly or
17 indirectly owned by a common owner or owners, either
18 corporate or noncorporate, or by one or more of the
19 member corporations or taxable entities.

20 2. Maine assets. "Maine assets" means, for any
21 taxable year, a taxable entity's total end of year
22 assets as required to be reported on United States
23 Internal Revenue Service Form 1120, Schedule L, ex-
24 cept for tangible personal property located outside
25 the State.

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

32 A. To the extent that a taxable entity derives
33 income from a unitary business carried on by 2 or
34 more members of an affiliated group, Maine net
35 income shall be determined by apportioning, in

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1 accordance with chapter 821, that part of net in-
2 come of the entire group which derives from the
3 unitary business.

4 4. Taxable entity. "Taxable entity" means any
5 financial institution, including any federally
6 chartered financial institution authorized to do
7 business in this State, except a credit union, and
8 any service corporation or subsidiary as defined in
9 Title 9-B, section 131 and any financial institution
10 holding company as defined in Title 9-B, section
11 1011, except that control as defined in section 1011,
12 shall mean ownership of more than 50% of the voting
13 stock owned directly or indirectly, which is or-
14 ganized under the laws of this State or authorized to
15 do business in this State, which at any time during
16 the taxable year realized Maine net income or had
17 Maine assets.

18 Sec. 36. 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

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1 were excluded from his adjusted gross income.

2 Sec. 37. 36 MRSA §5220, first ¶, as enacted by
3 P&SL 1969, c. 154, §7, is amended to read:

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

8 Sec. 38. 36 MRSA §5220, sub-§2, as amended by PL
9 1979, c. 711, Pt. H, §6, is further amended to read:

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

13 A. Who has adjusted gross income from sources in
14 this State of more than \$1,000 if single and
15 \$2,000 if married; or

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

23 Sec. 39. 36 MRSA §5221, sub-§1, ¶C, as enacted
24 by P&SL 1969, c. 154, §F, is amended to read:

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

32 Sec. 40. 36 MRSA §5221, sub-§2, as enacted by
33 P&SL 1969, c. 154, §F, is repealed and the following

HOUSE AMENDMENT "A" to H.P. 1641, L.D. 2315

1 enacted in its place:

2 2. Nonresidents. If both husband and wife are
3 nonresidents and one has no Maine-source income, the
4 spouse having Maine-source income shall file a sepa-
5 rate Maine nonresident income tax return, as a single
6 individual, in which event his tax liability shall be
7 separate; but they may elect to determine their joint
8 taxable income as nonresidents, in which case their
9 liabilities shall be joint and several.

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

17 Sec. 41. 36 MRSA §5224-A, as enacted by PL 1979,
18 c. 711, Pt. H, §8, is repealed and the following en-
19 acted in its place:

20 §5224-A. Return of part-year resident

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

HOUSE AMENDMENT "A" to H.P. 1641, L.D. 2315

1 the entire year were comprised only of that portion
2 which is attributed to the portion of the year during
3 which he was a resident individual.

4 Sec. 42. Appropriation. The following funds are
5 appropriated from the General Fund to carry out the
6 purposes of this Act.

7 1986-87

8 FINANCE AND ADMINISTRATION,
9 DEPARTMENT OF

10	Bureau of Taxation	
11	Positions	(5)
12	Personal Services	\$181,200
13	All Other	45,500
14	Capital Expenditures	45,500
15	Total	\$272,200
16	Provides funding for	
17	one director, one	
18	certified public ac-	
19	countant, one com-	
20	puter systems ana-	
21	lyst and one comput-	
22	er programmer ana-	
23	lyst for tax en-	
24	forcement and one	
25	Clerk IV for admin-	
26	istration of tobacco	
27	products tax.	

28 CORRECTIONS, DEPARTMENT OF

29	Fuel - Corrections	
30	All Other	\$(123,800)

31 DEFENSE AND VETERANS' SER-
32 VICES, DEPARTMENT OF

33	Military Training and	
34	Operations	

HOUSE AMENDMENT "A" to H.P. 1641, L.D. 2315

1 All Other \$(67,250)

2 FINANCE AND ADMINISTRATION,

3 DEPARTMENT OF

4 Buildings and Grounds

5 Operations

6 All Other \$(156,500)

7 MENTAL HEALTH AND MENTAL

8 RETARDATION, DEPARTMENT OF

9 Fuel for Institutions -

10 Mental Health and Mental

11 Retardation

12 All Other \$(152,450)

13 Deappropriates funds

14 no longer necessary

15 because of the drop

16 in petroleum prices

17 and the decrease in

18 usage because of en-

19 ergy conservation

20 throughout State

21 Government.'

22 Further amend the bill by striking out all of the

23 last 4 lines before the Statement of Fact (page 3,

24 lines 1 to 4 in L.D.) and inserting in their place

25 the following:

26

27 TOTAL APPROPRIATION \$15,072,200

28 Sec. 43. Application. Sections 17 and 19 to 41

29 shall apply to tax years beginning or or after Janu-

30 ary 1, 1986.

31 Emergency clause. In view of the emergency cited

32 in the preamble, sections 1 to 16 and section 18 of

33 this Act shall take effect June 1, 1986. The remain-

34 der of this Act shall take effect when approved.

HOUSE AMENDMENT "A" to H.P. 1641, L.D. 2315

1 FISCAL NOTE

2		<u>G.F.</u>	<u>L.G.F.</u>
3	Sections 1, 5, 7 and 8 (Fabrication Services)	\$2,000,000	\$107,500
4	Sections 2 and 4 (Certain food		
5	products)	650,000	35,000
6	Section 3 (Access charges)	5,694,000	306,000
7	Sections 5 and 6 (Lodging)	3,300,000	175,000
8	Sections 5 and 6 (Auto rentals)	284,700	15,300
9	Sections 9 to 14 and 18 (Insurance)	1,420,000	
10	Section 15 (Inheritance tax)	500,000	
11	Section 16 (Tobacco products tax)	450,000	
12	Sections 17 and 19 to 32 and		
13	36 to 38 (Non-resident income		
14	tax)	3,320,000	180,000
15	Sections 33 to 35 (Bank franchise tax)	949,000	51,000
16	Section 42 (Enforcement)	1,250,000	67,000'

22 STATEMENT OF FACT

23 This amendment expands the sales tax to cover
 24 fabrication services, telecommunications access ser-
 25 vices, and certain sales of food products and in-
 26 creases the sales tax on lodging and short-term auto
 27 rentals to 7%.

28 The amendment also equalizes the insurance premi-
 29 um tax by raising the tax on domestic insurers to 2%,
 30 establishes an excise tax on tobacco products other
 31 than cigarettes and changes the basis for the calcu-
 32 lation of income tax on nonresidents. It also facili-
 33 tates the settlement of estates, increases and clari-
 34 fies the bank franchise tax and provides appropri-
 35 ations for increased tax enforcement and

HOUSE AMENDMENT "*A*" to H.P. 1641, L.D. 2315

1 deappropriations because of reduced fuel costs.

2

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House
4/12/86 (Filing No. H-700)