

MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 1472, L.D. 2075)
2 (New Title)
3 SECOND REGULAR SESSION
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE
6

7 Legislative Document

No. 2381

9 H.P. 1690

House of Representatives, April 11, 1986

10 Reported by Representative McCollister from the Committee on Taxation
and printed under Joint Rule 2. Original bill sponsored by Representative
11 Cashman of Old Town. Cosponsored by Senator Twitchell of Oxford,
Representative Mayo of Thomaston and Representative Swazey of Bucksport.

12 EDWIN H. PERT, Clerk

13
14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-SIX
18

19 AN ACT Providing for Administrative Changes
20 in Maine Tax Laws.
21

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

24 Sec. 1. 36 MRSA sec. 141, sub-sec. 3, as enacted
25 by PL 1979, c. 378, sec. 4, is repealed.

26 Sec. 2. 36 MRSA sec. 142 is enacted to read:

27 sec. 142. Cancellation and abatement

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

1 Sec. 3. 36 MRSA sec. 171 is enacted to read:

2 sec. 171. Demand letter

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

16 Sec. 4. 36 MRSA sec. 173 is enacted to read:

17 sec. 173. Collection by warrant

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

40 2. Effect of warrant. The warrant shall have
41 the force and effect of an execution issued upon a

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

15 Warrants shall be returnable within one year.
16 New warrants may be issued on any such certificate
17 within 2 years from the return day of the last pre-
18 ceding warrant for sums remaining unsatisfied.

19 Sec. 5. 36 MRSA sec. sec. 175, 176 and 177 are
20 enacted to read:

21 sec. 175. Tax lien

22 1. Filing. If any tax imposed by this Title is
23 not paid when due, the State Tax Assessor may file in
24 the registry of deeds of any county or in the office
25 in which a financing statement with respect to tangi-
26 ble personal property is properly filed with Title
27 11, section 9-401, subsection (1), paragraph (b), a
28 notice of lien specifying the amount of the tax, in-
29 terest, penalty and costs due, the name and last
30 known address of the person liable for the amount and
31 the fact that the State Tax Assessor has complied
32 with all the provisions of this Title in the assess-
33 ment of the tax. From the time of filing, the amount
34 set forth in a certificate filed in a registry of
35 deeds of a county constitutes a lien upon all real
36 property in that county then owned or thereafter ac-
37 quired by that person in the period before the expi-
38 ration of the lien. From the time of filing, the
39 amount set forth in a certificate filed in the office
40 in which a financing statement with respect to per-
41 sonal property is properly filed constitutes a lien
42 upon all personal property in this State then owned
43 or thereafter acquired by that person in the period

1 before the expiration of the lien, except that that
2 lien upon personal property shall not extend to those
3 types of personal property which are not subject to
4 perfection of a security interest by means of the
5 filing under Title 11, sections 9-104, subsection
6 (7), 9-104, subsection (12), 9-302, subsection (3)
7 and 9-304. The lien shall be prior to any mortgage
8 or security interest recorded, filed or otherwise
9 perfected after the notice, other than a purchase
10 money security interest perfected in accordance with
11 Title 11, section 9-301, subsection (2) and 9-312,
12 subsection (4). In the case of any mortgage or secu-
13 rity interest properly recorded or filed prior to the
14 notice of lien which secures future advances by the
15 mortgages or secured party, the lien shall be junior
16 to all advances made within 45 days after filing of
17 the notice of lien, or made without knowledge of the
18 lien or pursuant to a commitment entered into without
19 knowledge of the lien. Subject to the limitations in
20 this section, the lien provided in this section has
21 the same force, effect and priority as a judgment
22 lien and shall continue for 5 years from the date of
23 recording unless sooner released or otherwise dis-
24 charged. The lien may, within the 5-year period, or
25 within 5 years from the date of the last extension of
26 the lien in the manner provided in this subsection,
27 be extended by filing for record in the appropriate
28 office a copy of the notice and, from the time of
29 filing, that lien shall be extended for 5 years un-
30 less sooner released or otherwise discharged.

31 2. Release. The State Tax Assessor shall issue
32 to the taxpayer a certificate of release of the lien
33 or release all or any portion of the property subject
34 to any lien provided for in this Part or subordinate
35 the lien to other liens if:

36 A. The State Tax Assessor finds that the liabil-
37 ity for the amount demanded, together with costs,
38 has been satisfied or has become unenforceable by
39 reason of lapse of time;

40 B. A bond is furnished to the State Tax Assessor
41 with surety approved by the State Tax Assessor in
42 a sum sufficient to equal the amount demanded,
43 together with costs, and conditioned upon payment
44 of any judgment rendered in proceedings regularly

1 instituted by the State Tax Assessor to enforce
2 collection of the bond at law or of any amount
3 agreed upon in writing by the State Tax Assessor
4 to constitute the full amount of the liability;

5 C. The State Tax Assessor determines at any time
6 that the interest of this State in the property
7 has no value; or

8 D. The State Tax Assessor determines that the
9 taxes are sufficiently secured by a lien on other
10 property of the taxpayer or that the release or
11 subordination of the lien will not endanger or
12 jeopardize the collection of the taxes.

13 3. Enforcement. The lien provided for by sub-
14 section 1 may be enforced at any time after the tax
15 liability with respect to which the lien arose be-
16 comes collectible under section 173, subsection 1 by
17 a civil action brought by the Attorney General in the
18 name of the State in the superior Court of the county
19 in which the property is located to subject any prop-
20 erty, of whatever nature, in which the taxpayer has
21 any right, title or interest, to the payment of such
22 tax or liability. The court shall, after the parties
23 have been duly notified of the action, proceed to ad-
24 judicate all matters involved in the action and fi-
25 nally determine the merits of all claims to and liens
26 upon the property, and, in all cases where a claim or
27 interest of the State therein is established, may de-
28 creed a sale of the property by the proper officer of
29 the court and a distribution of the proceeds of such
30 sale according to the findings of the court. If the
31 property is sold to satisfy a lien held by the State,
32 the State may bid at the sale such sum, not exceeding
33 the amount of that lien plus expenses of sale, as the
34 State Tax Assessor directs.

35 sec. 176. Levy

36 1. Definitions. As used in this section, unless
37 the context otherwise indicates, the following terms
38 have the following meanings.

39 A. "Delinquent," when used to refer to taxes,
40 means an assessed tax not paid on its due date
41 and as to which no further administrative or ju-

1 dicial review is available pursuant to section
2 151. When used to refer to a taxpayer, the term
3 means a taxpayer who is liable for delinquent
4 taxes.

5 B. "Levy" means an administrative power to col-
6 lect delinquent taxes by means of the procedure
7 provided for in this section or the exercise of
8 that power. The power to levy shall include the
9 powers of distraint, seizure by any means, gar-
10 nishment and sale, all in accordance with the
11 terms of this section. The power to levy shall
12 also include the power to release the levy where
13 it is no longer necessary to further the process
14 of collection of delinquent taxes. Exercise of
15 the power of levy shall have the effect of creat-
16 ing a lien and shall make the State Tax Assessor
17 a lien creditor with respect to the property,
18 within the meaning of Title 11, section 9-301,
19 subsection (3).

20 C. "Property" means the following assets of de-
21 linquent taxpayers, whether in their possession
22 at their business premises or in the possession
23 of 3rd parties: Cash, bank accounts, salaries and
24 wages, accounts receivable, life insurance and
25 endowment contracts, securities and other choses
26 in action, and rights to receive money which are
27 due absolutely and not subject to any contingen-
28 cy, subject to the jurisdiction of the State, to
29 the extent that such assets, other than salaries
30 and wages, are in existence at the time of the
31 levy to which they are subjected. The term does
32 not include any amount payable to an individual
33 with respect to his unemployment under unemploy-
34 ment compensation laws, nor any amount payable to
35 an individual under the United States Social Se-
36 curity Laws, nor does the term include property
37 or rights which, at the time of the levy, are
38 subject to an attachment or execution under any
39 judicial process.

40 D. "Salaries and wages" means gross compensation
41 received by an employee which is subject to fed-
42 eral withholding under the United States Internal
43 Revenue Code of 1954, as amended.

1 E. "Tax" means a sales, use or income tax im-
2 posed under this Title, together with interest
3 and penalties.

4 2. Levy power. The State Tax Assessor shall
5 have the power to levy upon the property of any de-
6 linquent taxpayer and may impose successive levies,
7 to the extent necessary to discharge the amount of
8 the delinquency. The levy power shall be exercised
9 in accordance with the provisions of this chapter.

10 3. Levy procedure. The State Tax Assessor shall
11 observe the following procedures in the exercise of
12 the levy power.

13 A. When the State Tax Assessor determines that
14 any taxpayer is delinquent in the payment of a
15 tax, he may cause a demand letter to be served
16 upon the taxpayer in the manner specified in sec-
17 tion 111, subsection 2. The demand letter shall
18 comply in all respects with the provisions of
19 section 171 and shall also state that no further
20 administrative or judicial review is available as
21 to the delinquent amount pursuant to section 151
22 and, that if payment of that amount is not re-
23 ceived within 10 days of the date of the demand,
24 the State Tax Assessor is empowered by law to
25 levy upon the property of the taxpayer, including
26 his salary or wages, in accordance with this
27 chapter.

28 B. If a taxpayer fails to tender payment of de-
29 linquent taxes within 10 days of his receipt of a
30 demand letter, the State Tax Assessor may levy
31 upon the taxpayer's property in the manner pre-
32 scribed as follows.

33 (1) The taxpayer's property in his posses-
34 sion and located on his business premises
35 may be physically seized during normal busi-
36 ness hours, and where appropriate, sold in
37 accordance with subsection 5. Prior to a
38 physical seizure of property located on the
39 taxpayer's business premises, the State Tax
40 Assessor's agent for collection must either
41 secure the taxpayer's written consent or ob-
42 tain an ex parte court order permitting him

1 to enter upon the premises for the purpose
2 of levying upon the taxpayer's property and
3 directing the sheriff for the county in
4 which the premises are located to assist him
5 in effecting the entry and levy. Applica-
6 tion for such an order may be made to either
7 the Superior Court for Kennebec County or
8 for the county in which the premises are lo-
9 ated and the order shall issue in every
10 case where the court is satisfied that the
11 State Tax Assessor has complied with this
12 section.

13 (2) A levy upon the taxpayer's property in
14 the possession of a 3rd party is accom-
15 plished by service upon such party of a no-
16 tice of levy and by service upon the taxpay-
17 er of a copy of the notice, in the manner
18 specified in section 111, subsection 2. The
19 notice of levy shall specify the name and
20 address of the taxpayer, the property to be
21 levied upon, and the amount for which the
22 property is subjected to levy, shall prohib-
23 it the 3rd party from paying over or other-
24 wise disposing of the property to the tax-
25 payer, except as provided in subparagraph
26 (3), or to anyone other than the State Tax
27 Assessor, and shall require the 3rd party to
28 surrender and deliver up the property to the
29 State Tax Assessor within 10 days of the
30 date of such notice, except as provided in
31 subparagraphs (3) and (4). The notice of
32 levy shall further state that failure to
33 comply with its terms will subject the 3rd
34 party to liability to the State Tax Assessor
35 as provided in subsection 4. Service of a
36 notice of levy shall have the same legal ef-
37 fect as physical seizure, giving the State
38 Tax Assessor constructive possession of the
39 property as of the date of service of the
40 notice.

41 (3) A levy upon salary and wages shall be
42 made in the manner prescribed in subpara-
43 graph (2), except that the notice of levy
44 shall specify the amount of percentage to be
45 surrendered and delivered up to the State

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Tax Assessor by the taxpayer's employer for each pay period, consistent with the provisions of this subparagraph. Salaries and wages are exempt from levy to the extent of 75% of the taxpayer's disposable earnings for any pay period, or an amount equal to the federal minimum hourly wage multiplied by 30, multiplied by the number of weeks in the pay period, whichever is less. A levy on salaries and wages shall be continuous from the date on which the notice of levy is served until the delinquency is discharged and shall apply to all pay periods commencing after the date on which the notice of levy is served. The State Tax Assessor shall notify the taxpayer's employer immediately upon discharge of the delinquency that the levy has been discontinued.

(4) A notice of levy upon a life insurance or endowment contract may require payment to the State Tax Assessor of the full amount which the taxpayer could have had advanced to him pursuant to such contract as of the date of payment, to the extent required to discharge the delinquency. Payment shall be set for a date 90 days subsequent to the date on which the notice is served. The notice of levy in such a case shall constitute the exercise of the taxpayer's right to such an advance.

4. Duty and liability of 3rd party. Any person in possession of property of the taxpayer upon whom a notice of levy is served shall comply in a timely fashion with the terms of the levy. Upon compliance, that person shall be discharged from any obligation or liability to the delinquent taxpayer with respect to the property levied upon. Any person who fails to comply with the terms of a notice of levy shall be personally liable to the State Tax Assessor in an amount equal to the value of the property with respect to which the notice was served, but not exceeding the amount of taxes for the collection of which the levy was made. It shall be a defense to the liability imposed by this subsection that the person refusing to comply with the terms of a notice of a levy

1 or his bailor had a valid claim against the delin-
2 quent taxpayer accruing prior to service of the no-
3 tice or a valid security interest or lien upon the
4 property of the taxpayer perfected prior to service
5 of the notice, but this defense shall exonerate the
6 person refusing to comply from liability only to the
7 extent of that claim, security interest or lien.

8 A person who fails to comply with the terms of a no-
9 notice of levy without reasonable cause shall be liable
10 for an additional penalty equal to 50% of the liabil-
11 ity described in this subsection. The described lia-
12 bility, but not the 50% penalty, shall be credited
13 against the tax delinquency for the collection of
14 which the levy was made.

15 5. Sale of property. The State Tax Assessor
16 shall sell property levied upon where necessary in
17 order to enable him to apply the proceeds to the tax
18 delinquency for the collection of which the levy was
19 made. A sale of property levied upon under this
20 chapter shall be conducted by the State Tax Assessor
21 or his designee in a commercially reasonable manner
22 no later than 60 days after the date on which phys-
23 ical possession of the property was obtained. The
24 State Tax Assessor shall apply the proceeds of any
25 sale first to payment of any valid security interest
26 or lien upon the property perfected prior to the
27 physical seizure or service of the notice of levy,
28 then to the liability of the delinquent taxpayer.
29 Any balance remaining after discharge of the delin-
30 quency shall be returned to the taxpayer, unless a
31 court orders otherwise. The purchaser at such a sale
32 of property levied upon shall receive good title to
33 that property, free and clear of all encumbrances and
34 claims, legal and equitable, not explicitly stated by
35 the State Tax Assessor at the time of sale, notwith-
36 standing any other provision of law.

37 6. Production of books. If a levy has been made
38 or is about to be made on property, any person having
39 custody or control of any books or records containing
40 evidence or statements relating to the property sub-
41 ject to levy shall, upon demand of the State Tax As-
42 essor, exhibit the books or records to the State Tax
43 Assessor. If any person refuses to comply with the
44 demand, the State Tax Assessor may apply for an ex

1 parte order in the Superior Court for Kennebec County
2 or for the county where the books or records are lo-
3 cated, requiring production for inspection and copy-
4 ing of the books and records. The order shall issue
5 in every case where the court is satisfied that there
6 are reasonable grounds for the demand.

7 7. Actions permitted. Any person, other than
8 the taxpayer whose delinquency occasioned the levy,
9 who claims that property in which he has a preexist-
10 ing perfected or otherwise valid security interest on
11 lien was wrongfully made the subject of a physical
12 seizure or notice of levy pursuant to subsection 3,
13 paragraph B, subparagraphs (1) and (2) may bring a
14 civil action against the State Tax Assessor in Supe-
15 rior Court. Any recovery in such an action shall be
16 limited to the value of the property levied upon and
17 shall in no case exceed the proceeds of any sale of
18 the property conducted in accordance with the provi-
19 sions of subsection 6. Except as provided in this
20 subsection, no suit for the purpose of restraining
21 the collection of taxes pursuant to this section
22 shall be maintained in any court of this State by any
23 person.

24 sec. 177. Trust fund status of certain collections

25 1. Generally. All taxes collected by any person
26 from purchasers pursuant to Part 3, all taxes col-
27 lected by any person from purchasers under color of
28 Part 3, which have not been properly returned and
29 credit to the purchasers from whom they were col-
30 lected, all taxes collected by any person pursuant to
31 chapter 451 or 459, and all taxes collected by any
32 person pursuant to chapter 827 shall constitute a
33 special fund in trust for the State Tax Assessor.
34 The liability for the taxes shall be enforceable by
35 assessment and collection, in the manner prescribed
36 in Parts 3, 5 and 8 of this Part, against the person
37 and against any officer, director, member, agent or
38 employee of that person who, in that capacity, is re-
39 sponsible for the control or management of the funds
40 or finances of that person or is responsible for the
41 payment of that person's taxes. The term "purchas-
42 ers," as used in this subsection, includes persons
43 who have paid rental charges for living quarters in
44 any hotel, rooming house, tourist or trailer camp.

1 2. Responsible individual. Each person required
2 to collect taxes which are designated by subsection 1
3 as trust funds shall inform the State Tax Assessor,
4 at the time an audit of that person's trust fund ob-
5 ligation is performed by the State Tax Assessor, of
6 the name and position of the individual who generally
7 is responsible for the control or management of that
8 person's funds or finances and, if different, the in-
9 dividual who is specifically responsible for the col-
10 lection and paying over of those trust funds. Any
11 deficiency assessments of taxes which are designated
12 by subsection 1 as trust funds shall be made jointly
13 in the names of the person required to collect the
14 taxes and of the designated responsible individual.

15 3. Notice to segregate. Whenever the State Tax
16 Assessor finds that the payment of the trust funds
17 established under subsection 1 will be jeopardized by
18 delay, neglect or misappropriation or whenever any
19 person fails to make payment of taxes or file reports
20 as required by Part 3, or by chapter 451, 459 or 827,
21 the State Tax Assessor may direct that person to seg-
22 regate the trust funds from and not to comingle then
23 with any other funds or assets of that person. With-
24 in 5 days after the mailing of notice of that segre-
25 gation requirement, all taxes which thereafter are
26 collected shall be paid over an account to the State
27 Tax Assessor until the taxes are due. The State Tax
28 Assessor shall establish in the segregation notice
29 the manner in which the taxes are to be paid to him.
30 The segregation requirement shall remain in effect
31 until a notice of cancellation is given by the State
32 Tax Assessor.

33 4. Revocation for nonsegregation. Upon the ex-
34 piration of the 5-day period designated in subsection
35 3, if any person who is a "retailer" under Part 3 or
36 a fuel supplier, distributor or importer subject to
37 Part 5 fails to make the required payments on account
38 to the State Tax Assessor, the State Tax Assessor may
39 revoke any registration certificate which has been
40 issued on that person. The revocation shall be re-
41 viewable in accordance with section 151.

42 Sec. 6. 36 MRSA sec. 184 is enacted to read:

43 sec. 184. Criminal offenses

1 Any person who is required under this Title to
2 collect, truthfully account for and pay over any tax
3 imposed by this title and who intentionally fails to
4 collect or truthfully account for or pay over that
5 tax at the time required by law or rule shall, in ad-
6 dition to any other penalties provided by law, be
7 guilty of a Class B crime. For purposes of this sec-
8 tion, the word "person" includes, in addition to its
9 defined meaning in section 111, subsection 3, any of-
10 ficer, director, member, agent or employee of another
11 person who, in that capacity, is responsible for the
12 control or management of the funds and finances of
13 that person or is responsible for either the collec-
14 tion or payment of that retailer's taxes.

15 Sec. 7. 36 MRSA sec. 187, sub-sec. 3, as amended
16 by PL 1981, c. 364, sec. 15, is repealed and the fol-
17 lowing enacted in its place:

18 3. Failure to pay. The following penalties shall
19 apply.

20 A. Any person who fails to pay, on or before its
21 due date, any tax due under this Title shall be
22 liable for a penalty of \$5 or 5% of the unpaid
23 tax, whichever is greater, for each month or
24 fraction thereof during which the failure contin-
25 ues, provided that the penalty shall not exceed,
26 in the aggregate, \$25 or 25% of the unpaid tax,
27 whichever is greater. For purposes of this sub-
28 section, an amount assessed upon a person by the
29 State Tax Assessor is to be considered due as of
30 the time prescribed for filing the return on
31 which it should have been reported.

32 B. Any person who fails to pay a tax assessment
33 for which no further administrative or judicial
34 review is available pursuant to section 151 and
35 the Maine Administrative Procedure Act, Title 5,
36 chapter 375, shall be liable for a penalty of \$25
37 or 25% of the tax due, whichever is greater, if
38 payment of the tax due is not made within 10 days
39 of the person's receipt of notice of demand for
40 payment as provided by Title 36. This penalty is
41 to be explained in the notice of demand and is
42 final when levied. Notwithstanding other provi-
43 sions outside this paragraph, it is to be en-
44 forceable as though demand was made.

1 Sec. 8. 36 MRSA sec. 1752, sub-sec. 11, as
2 amended by PL 1985, c. 276, sec. 2, is further
3 amended to read:

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

1 which that retailer has used in the course of his or
2 its business, is not a casual sale and is a retail
3 sale subject to taxation under this Part, if that
4 property is of a like character to that sold in the
5 ordinary course of repeated and successive transac-
6 tions. "Casual sale" shall not include any transac-
7 tion in which tangible personal property is sold,
8 transferred or offered for sale by a representative
9 for the owner's account when such representative is a
10 registered retailer, in which event such registered
11 retailer shall have the same duties respecting such
12 sale as if he had sold on his own account. "Retail
13 sale" and "sale at retail" do not include the sale of
14 tangible personal property which becomes an ingredi-
15 ent or component part of, or which is consumed or de-
16 stroyed or loses its identity directly and primarily
17 in the production of, tangible personal property for
18 later sale or lease, other than lease for use in this
19 State, but shall include fuel and electricity but
20 shall not include electricity separately metered and
21 consumed in any electrolytic process for the manufac-
22 ture of tangible personal property for later sale,
23 nor any fuel oil or coal, the by-products from the
24 burning of which become an ingredient or component
25 part of tangible personal property for later sale.
26 ~~"Retail sale" and "sale at retail" do not include the~~
27 ~~sale, to a person engaged in the business of renting~~
28 ~~automobiles, of automobiles, or integral parts of au-~~
29 ~~tomobiles or accessories to automobiles, for rental~~
30 ~~or for use in an automobile rented, on a short term~~
31 ~~basis. It shall be considered that tangible personal~~
32 ~~property is "consumed or destroyed" or "loses its~~
33 ~~identity" in such manufacture, if it has a normal~~
34 ~~physical life expectancy of less than one year as a~~
35 ~~usable item in the use to which it is applied. Tangi-~~
36 ~~ble personal property is "consumed or destroyed" or~~
37 ~~"loses its identity" in that production, if it has a~~
38 ~~normal physical life expectancy of less than one year~~
39 ~~as a usable item in the use to which it is applied.~~
40 ~~"Retail sale" and "sale at retail" do not include the~~
41 ~~sale, to a person engaged in the business of renting~~
42 ~~automobiles, of automobiles, or integral parts of au-~~
43 ~~tomobiles or accessories to automobiles, for rental~~
44 ~~or for use in an automobile rented, on a short-term~~
45 ~~basis. "Retail sale" or "sale at retail" do not in-~~
46 ~~clude the sale of containers, boxes, crates, bags,~~
47 ~~cores, twines, tapes, bindings, wrappings, labels and~~

1 other packing, packaging and shipping materials when
2 sold to persons for use in packing, packaging or
3 shipping tangible personal property sold by them or
4 upon which they have performed the service of clean-
5 ing, pressing, dyeing, washing, repairing or recondi-
6 tioning in their regular course of business and which
7 are transferred to the possession of the purchaser of
8 such tangible personal property.

9 Sec. 9. 36 MRSA sec. 1757, as amended by PL
10 1979, c. 520, sec. 3, is further amended to read:

11 sec. 1757. Revocation of registration

12 The State Tax Assessor may revoke the registra-
13 tion certificate of a registrant who fails to file,
14 within 15 days after receipt of notice, a bond or de-
15 posit required under section 1759 and may revoke for
16 cause a registration certificate issued under chap-
17 ters 211 to 225. The State Tax Assessor may revoke
18 the registration certificate of a registrant who
19 fails to file with the State Tax Assessor within 15
20 days after the due date a return as required under
21 chapters 211 to 225. A revocation shall be review-
22 able in accordance with section 151. In any case
23 where a registrant has failed to pay any tax required
24 of him by this Part when the tax is shown to be due
25 on a report filed by the registrant, or admitted to
26 be due by the registrant, or has been determined to
27 be due and that determination has become final, noti-
28 fication of the registrant by the State Tax Assessor
29 as provided in this section shall operate to suspend
30 the registration certificate from the date of the no-
31 tice of suspension until such time as the delinquent
32 tax is paid or a bond or deposit required under sec-
33 tion 1759 is filed with the State Tax Assessor or it
34 is determined by an appropriate court that revocation
35 is not warranted.

36 Sec. 10. 36 MRSA sec. 1760, sub-sec. 3, as
37 amended by PL 1981, c. 163, sec. 3, is further
38 amended to read:

39 3. Food products for human consumption. Sales of
40 food products. The term "food products" shall, except
41 as otherwise provided, include cereals and cereal
42 products; milk and milk products, other than candy

1 and confectionery, but including ice cream; oleomar-
2 garine; meat and meat products; fish and fish
3 products; eggs and egg products; vegetable and vege-
4 table products; fruit and fruit products, including
5 pure fruit juices; spices, condiments and salt; sugar
6 and sugar products other than candy and confection-
7 ery; coffee and coffee substitutes; tea, cocoa and
8 cocoa products, other than candy and confectionery.

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

18 "Food products" shall not include meals served on or
19 off the premises of the retailer; or drinks or food
20 furnished, prepared or served for consumption at ta-
21 bles, chairs or counters, or from trays, glasses,
22 dishes or other tableware provided by the retailer.

23 This exemption does not apply to products sold to a
24 person for resale through coin-operated vending ma-
25 chines when sold to a person whose gross receipts
26 from the retail sale of tangible personal property
27 derived through sales from vending machines are more
28 than 50% of his gross receipts.

29 The sale of food products ordinarily sold for immedi-
30 ate consumption on or near the location of the re-
31 tailer is a taxable sale even though such products
32 are sold on a "take out" or "to go" order and are ac-
33 tually packaged or wrapped and taken from the
34 premises.

35 The sale of items that are not food products as de-
36 defined in this Part are exempt from sales or use tax
37 if those items are purchased with federal food stamps
38 distributed by the Department of Human Services.

39 Sec. 11. 36 MRSA sec. 1760, sub-sec. 23, as
40 amended by PL 1975, c. 527, is further amended to
41 read:

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

8 Sec. 12. 36 MRSa sec. 1760, sub-sec. 23-A as en-
9 acted by PL 1975, c. 528 is amended to read:

10 23-A. Truck bodies and trailers. Truck bodies,
11 semi-trailers, and trailers, manufactured in Maine,
12 except camper bodies and trailers, purchased by a
13 nonresident who intends to remove them immediately
14 from the State upon delivery by the seller. If the
15 truck body, semi-trailer or trailer is returned to
16 Maine for an otherwise taxable use in Maine within 6
17 12 months of the date of purchase, the purchaser
18 shall be liable for use tax, based on the original
19 purchase price.

20 Sec. 13. 36 MRSa sec. 1760, sub-sec. 25 as
21 amended by PL 1979, c. 687, sec. 6, is further
22 amended to read:

23 25. Boats sold to nonresidents. Sales in this
24 State to nonresidents of yachts and other pleasure
25 boats and commercial vessels and boats actually reg-
26 istered for numbering, enrolled or documented under
27 federal or foreign law in the appropriate
28 customhouses or registry offices for location thereof
29 or home ports therefor outside the State, when such
30 craft are either delivered outside the State or de-
31 livered in the State to be sailed or transported out-
32 side the State immediately upon delivery by the sell-
33 er; and any sales to nonresidents, under contracts
34 for the construction of any such craft to be so de-
35 livered, of materials to be incorporated therein; and
36 any sales to nonresidents for the repair, alteration,
37 refitting, reconstruction, overhaul or restoration of
38 any such craft to be so delivered, of materials to be
39 incorporated therein. If a craft so registered is
40 registered for a location or home port in the State,
41 within 6 12 months of the date of purchase, the per-
42 son seeking registration shall be liable for the use
43 tax on the basis of the original purchase price.

1 Sec. 14. 36 MRSA sec. 1760, sub-sec. 27, as
2 amended by PL 1979, c. 687, sec. 7, is further
3 amended to read:

4 27. Aircraft purchased by a nonresident. Air-
5 craft purchased by a nonresident and intended to be
6 driven or transported outside the State immediately
7 upon delivery by the seller. If any such craft are
8 registered for use in Maine within ~~6~~ 12 months of the
9 date of purchase, the person seeking registration
10 shall be liable for use tax on the basis of the orig-
11 inal purchase price.

12 Sec. 15. 36 MRSA sec. 1760, sub-sec. 28,
13 para. B, as amended by PL 1983, c. 828, sec. 5, is
14 further amended to read:

15 B. Receiving support from the Department of Men-
16 tal Health and Mental Retardation pursuant to Ti-
17 tle 34-B, section ~~1206~~, 3604 ~~or~~, 5433 or 6204.

18 Sec. 16. 36 MRSA sec. 1760-A, as repealed and
19 replaced by PL 1979, c. 687, sec. 8, is repealed.

20 Sec. 17. 36 MRSA sec. 1760-B is enacted to read:

21 sec. 1760-B. Consistency

22 If subsections of section 1760 are enacted with
23 identical subsection numbers, the agency with the re-
24 sponsibility for preparing the report required by Ti-
25 tle 3, section 163-A, subsection 6, may, after con-
26 sultation with the Bureau of Taxation, renumber the
27 subsections sequentially.

28 Sec. 18. 36 MRSA c. 218, as amended, is re-
29 pealed.

30 Sec. 19. 36 MRSA sec. 1959, as amended by PL
31 1981, c. 470, Pt. A, sec. 157, is repealed.

32 Sec. 20. 36 MRSA sec. 1960 is repealed.

33 Sec. 21. 36 MRSA sec. 1961, as amended by PL
34 1979, c. 378, sec. 16, is repealed.

35 Sec. 22. 36 MRSA sec. 1962, as amended by PL
36 1983, c. 480, Pt. A, sec. 41, is repealed.

1 Sec. 23. 36 MRSA sec. 1965, as enacted by PL
2 1975, c. 765, sec. 24, is repealed.

3 Sec. 24. 36 MRSA sec. 2011, first para. , as
4 amended by PL 1981, c. 180, sec. sec. 2 and 3, is
5 further amended to read:

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

37 Sec. 25. 36 MRSA sec. 2013, sub-sec. 1, para. C,
38 as amended by PL 1985, c. 411, sec. 1, and c. 447,
39 sec. 1, are repealed and the following enacted in
40 their place:

41 C. "Depreciable machinery and equipment" means
42 that part of the following machinery and equip-
43 ment for which depreciation is allowable under
44 the United States Internal Revenue Code:

1 (1) New or used machinery and equipment for
2 use directly and primarily in commercial ag-
3 ricultural production, including self-
4 propelled vehicles, but excluding motor ve-
5 hicles as defined in section 1752, subsec-
6 tion 7, attachments and equipment for the
7 production of field and orchard crops; new
8 or used machinery and equipment used in pro-
9 duction of milk and in animal husbandry and
10 production of livestock, including poultry;
11 or

12 (2) New or used watercraft used directly
13 and primarily for commercial fishing; and
14 nets, traps, cables, tackle and related
15 equipment necessary to the operation of a
16 commercial fishing venture, but excluding
17 motor vehicles as defined in section 1752,
18 subsection 7.

19 Sec. 26. 36 M RSA sec. 2013, sub-sec. 2, as
20 amended by PL 1985, c. 447, sec. sec. 2 and 3, is
21 further amended to read:

22 2. Credit authorized. Any person, association
23 of persons, firm or corporation who purchases or
24 leases depreciable machinery or equipment for use in
25 commercial agricultural production or commercial
26 fishing shall be refunded the amount of sales tax
27 paid by him by presenting to the State Tax Assessor
28 evidence that the machinery or equipment complies
29 with the definitions of subsection 1.

30 Evidence required by the State Tax Assessor may in-
31 clude a copy or copies of that portion of the
32 purchaser's or lessee's most recent filing under the
33 United States Internal Revenue Code which indicates
34 that the purchaser or lessee is engaged in commercial
35 agricultural production or commercial fishing and
36 that the purchased machinery or equipment is depre-
37 ciable for those purposes or would be depreciable for
38 those purposes if owned by the lessee.

39 In the event that any piece of machinery or equipment
40 shall be only partially depreciable under the United
41 States Internal Revenue Code, any reimbursement of
42 the sales tax shall be prorated accordingly.

1 Application for refunds shall be filed with the State
2 Tax Assessor within 36 months of the date of purchase
3 or execution of the lease.

4 Sec. 27. 36 MRSA sec. 2859, as enacted by PL
5 1981, c. 711, sec. 10, is repealed and the following
6 enacted in its place:

7 sec. 2859. Estimated tax requirements

8 A mining company shall make payments of estimated
9 tax pursuant to section 5228, except that the esti-
10 ated tax liability is to be based on liability for
11 the mining excise tax rather than the income tax.

12 Sec. 28. 36 MRSA sec. sec. 3231 to 3233, as
13 amended by PL 1975, c. 127, sec. 1, are repealed.

14 Sec. 29. 36 MRSA sec. 3234, sub-sec. 1, para. B,
15 as enacted by PL 1983, c. 94, Pt. D, sec. 7, is
16 amended to read:

17 B. The amount of tax required to be collected or
18 paid is not paid on the due date prescribed in
19 chapters 451 and 459.

20 Sec. 30. 36 MRSA sec. sec. 3236 to 3239, as
21 amended by PL 1985, c. 127, sec. 1, are repealed.

22 Sec. 31. 36 MRSA sec. 3241, as amended by PL
23 1985, c. 127, sec. 1, is repealed.

24 Sec. 32. 36 MRSA sec. 4641-C, sub-sec. 1, as re-
25 pealed and replaced by PL 1977, c. 318, sec. 1, is
26 amended to read:

27 1. Deeds to government property. Deeds to prop-
28 erty acquired transferred to or by the United States
29 of America, the State of Maine or any of their in-
30 strumentalities, agencies or subdivisions;

31 Sec. 33. 36 MRSA sec. 5130, as enacted by PL
32 1977, c. 686, sec. 11, is amended to read:

33 sec. 5130. Retirement credit

1 For any taxable year beginning on and after Janu-
2 ary 1, 1978, a resident may receive a credit against
3 state taxes due equal to 20% of any credit he re-
4 ceived for that year under the United States Internal
5 Revenue Code of 1954, section 37 Section 22, credit
6 for the elderly exclusive of any credit entitlement
7 of a qualified individual who has not attained the
8 age of 65 before the close of the taxable year. In no
9 case shall this credit reduce the Maine income tax to
10 less than zero.

11 Sec. 34. 36 MRSA sec. 5203, as amended by PL
12 1979, c. 615, sec. 5, is repealed and the following
13 enacted in its place:

14 sec. 5203. Minimum tax for tax preferences

15 1. Noncorporate. A tax is imposed, for each
16 taxable year, upon every noncorporate taxpayer re-
17 quired to file a return under this Part, equal to the
18 amount by which 3% of the excess of that taxpayer's
19 alternative minimum taxable income, as defined in the
20 United States Internal Revenue Code of 1954, Section
21 55(b), as amended, over that taxpayer's exemption
22 amount, as defined in the United States Internal Re-
23 venue Code of 1954, Section 55(f), as amended, exceeds
24 that taxpayer's liability for all other taxes, except
25 withholding taxes, under this Part.

26 2. Corporate. A tax is imposed, for each tax-
27 able year, upon every corporate taxpayer required to
28 file a return under this Part, equal to the amount by
29 which 2.25% of the sum of that taxpayer's items of
30 tax preference, as defined in the United States In-
31 ternal Revenue Code of 1954, Section 57, as amended,
32 but excluding the capital gain tax preference item in
33 the United States Internal Revenue Code of 1954, Sec-
34 tion 57, Subsection (a) (9) (B), exceeds the greater
35 of \$1,500 or that taxpayer's liability for all other
36 taxes, except withholding taxes, under this Part.

37 3. Adjustment of tax. The tax imposed by this
38 section shall be adjusted proportionately, in accord-
39 ance with a rule promulgated by the State Tax Asses-
40 sor, if only a portion of the taxpayer's income is
41 taxable by the State.

1 Sec. 35. 36 MRSA sec. 5228, as amended by PL
2 1979, c. 615, sec. 6, is repealed and the following
3 enacted in its place:

4 sec. 5228. Estimated tax

5 1. Definitions. As used in this section, unless
6 the context otherwise indicates, the following terms
7 have the following meanings.

8 A. "Allowable credits" means the total amount of
9 any payments with regard to a taxpayer which have
10 been or will be paid to the Bureau of Taxation
11 prior to the date the payment against which they
12 are to be used as a credit is due and which are
13 available to offset any estimated tax liability.

14 B. "Estimated tax" means the amount which a per-
15 son estimates as the total amount of income tax
16 which will be due under this Part exclusive of a
17 withholder's liability for taxes withheld for a
18 taxable year less any allowable credits for that
19 taxable year.

20 C. "Period of underpayment" is the period of
21 time from the date the installment is due until
22 the underpayment is satisfied or until the tax
23 return to which the estimate installment applies
24 is due, whichever is less.

25 2. Requirement to pay estimated tax. Every per-
26 son subject to taxation under this Part shall make
27 payment of estimated tax as required by this Part in
28 such form as the State Tax Assessor may require. If
29 the person's income tax liability pursuant to this
30 Part exclusive of a withholder's liability for taxes
31 withheld reduced by allowable credits for the taxable
32 year is less than \$500 for the taxable year or, if
33 the person had less than \$500 tax liability for the
34 prior tax year, the requirement to make the payments
35 is waived.

36 3. Amount of estimated tax to be paid. Every
37 person required to make payment of estimated tax is
38 liable for an estimated tax which is no less than the
39 smaller of the following:

1 A. An amount equal to the preceding year's State
2 income tax liability, if that preceding year was
3 a taxable year of 12 months; or

4 B. An amount equal to 80% of the income tax lia-
5 bility for the current year, for individuals or
6 an amount equal to 90% of the income tax liabili-
7 ty for the current year for corporations, except
8 that for farmers and fishermen this amount shall
9 be 66 2/3% of the tax liability for the current
10 year.

11 4. Due dates for estimated tax installments. For
12 individuals, an installment payment is due the 15th
13 day of the 4th, 6th, 9th and 13th month following the
14 beginning of their fiscal year, except that farmers
15 and fishermen have a single installment payment due
16 date of January 15th of the following taxable year.
17 For corporations, an installment payment is due the
18 15th day of the 4th, 6th, 9th and 12th month follow-
19 ing the beginning of their fiscal year.

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

25 A. The taxpayer establishes by adequate record
26 the actual distribution of tax liability and al-
27 lowable credits, or both. In this case, the
28 amount of the installment payments should be ad-
29 justed accordingly and be determined in accord-
30 ance with the portion of the taxpayer's estimated
31 tax liability applicable to that portion of his
32 taxable year completed by the close of the month
33 preceding the installment's due date less esti-
34 mated tax payments already made for the taxable
35 year; or

36 B. The taxpayer is a farmer or fisherman in
37 which case a single installment is required.

38 A penalty shall accrue automatically on underpayments
39 of the required installment amount for the period of
40 underpayment at the rate provided pursuant to section
41 186. For cause, the State Tax Assessor may waive or
42 abate all or any part of the penalty.

1 6. Joint estimated tax payment. If they are eli-
2 gible to do so for federal tax purposes, a husband
3 and wife may jointly estimate tax as if they were one
4 taxpayer, in which case the liability with respect to
5 the estimated tax shall be joint and several. If
6 joint estimate payment is made, but husband and wife
7 elect to determine their taxes under this chapter
8 separately, the estimated tax for the year may be
9 treated as the estimated tax of either husband or
10 wife, or may be divided between them, as they may
11 elect.

12 7. Short taxable year. Payment of taxes for a
13 short taxable year shall be as provided in this sub-
14 section.

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

19 B. For a corporation having a taxable year of
20 less than 12 months the estimated tax is to be
21 paid in full by the 15th day of the last month of
22 the taxable year.

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

27 9. Individual underpayment of 4th installment.
28 If, on or before January 31st of the following tax-
29 able year, an individual, not including a corpora-
30 tion, files a return for the taxable year of the re-
31 turn, then no penalty may be imposed with respect to
32 any underpayment of the 4th required installment for
33 the year.

34 10. Farmer or fisherman; underpayment. If an in-
35 dividual is a farmer or fisherman for any taxable
36 year, then no penalty may be imposed with respect to
37 any underpayment of the required installment of esti-
38 imated tax, if on or before March 1st of the following
39 taxable year, that individual files a return for the
40 taxable year and pays in full his tax liability for
41 the taxable year of the return.

1 Sec. 36. 36 MRSA sec. 5229, as amended by PL
2 1979, c. 615, sec. 7, is repealed.

3 Sec. 37. 36 MRSA sec. 5230, as amended by PL
4 1979, c. 541, Pt. A, sec. 240, is repealed.

5 Sec. 38. 36 MRSA sec. 5253, sub-sec. 2, as en-
6 acted by P&SL 1969, c. 154, sec. F, is repealed.

7 Sec. 39. 36 MRSA sec. 5254, as amended by PL
8 1981, c. 371, sec. 4, is further amended to read:

9 sec. 5254. Employer's liability for withheld taxes

10 Every employer required to deduct and withhold
11 tax under this Part is hereby made liable for such
12 tax. For purposes of assessment and collection, any
13 amount required to be withheld and paid over to the
14 assessor, and any additions to tax, penalties and in-
15 terest with respect thereto, shall be considered the
16 tax of the employer. ~~Any amount of tax actually de-~~
17 ~~ducted and withheld under this Part shall be held to~~
18 ~~be a special fund in trust for the assessor. No per-~~
19 ~~son shall~~ may have any right of action against an em-
20 ployer in respect to any money deducted and withheld
21 and paid over to the assessor in compliance or in in-
22 tended compliance with this Part.

23 Sec. 40. 36 MRSA sec. 5274-A, as enacted by PL
24 1979, c. 378, sec. 43, is amended to read:

25 sec. 5274-A. Penalty

26 Any person required to collect, truthfully ac-
27 count for and pay over the tax imposed by this Part,
28 who willfully fails to collect the tax, willfully
29 fails to truthfully account for ~~and~~ willfully fails
30 to pay over the tax or willfully attempts in any man-
31 ner to evade or defeat the tax or the payment there-
32 of, shall, in addition to other penalties provided by
33 law, be liable to a penalty equal to the total amount
34 of the tax evaded, not collected or not accounted for
35 and paid over. For purposes of this section, "person"
36 means an individual, corporation or partnership or an
37 officer or employee of any corporation, including a
38 dissolved corporation, or a member or employee of any
39 partnership who, as such officer, employee or member,

1 was, at the time of the violation, under a duty to
2 perform the act with respect to which the violation
3 occurred.

4 Sec. 41. 36 MRSA sec. 5311, sub-sec. 2, as
5 amended by PL 1979, c. 378, sec. 47, is repealed.

6 Sec. 42. 36 MRSA sec. 5312, as amended by PL
7 1977, c. 694, sec. 733, is repealed.

8 Sec. 43. 36 MRSA sec. 5312-A, as amended by PL
9 1977, c. 694, sec. 734, is repealed.

10 Sec. 44. 36 MRSA sec. 5313, as amended by PL
11 1979, c. 541, Pt. B, sec. 51, is repealed.

12 Sec. 45. 36 MRSA sec. sec. 5314 and 5315, as en-
13 acted by P&SL 1969, c. 154, sec. F, are repealed.

14 Sec. 46. 36 MRSA sec. 5331, as amended by PL
15 1983, c. 480, Pt. A, sec. 68, is repealed.

16 Sec. 47. 39 MRSA sec. 57-C, sub-sec. 2, as en-
17 acted by PL 1985, c. 372, Pt. A, sec. 23, is amended
18 to read:

19 2. Due date. The assessment imposed by this
20 section is due on or before the ~~60th~~ last day of the
21 2nd month after the close of the calendar quarter.

22 Sec. 48. Effective dates. Sections 25 and 26 of
23 this Act shall become effective for leases entered
24 into on or after July 1, 1986. Section 34 of this
25 Act shall become effective for tax years beginning on
26 or after January 1, 1986. Sections 27 and 35 of this
27 Act shall become effective for tax years beginning on
28 or after January 1, 1987.

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FISCAL NOTE

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

Fiscal Year 1987

Section 5

General Fund	\$142,350
Local Government Fund	7,650
Total	<u>\$150,000</u>

Section 7

General Fund	\$100,000
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Section 10

General Fund	(\$142,350)
Local Government Fund	(7,650)

Section 34

General Fund	(\$95,000)
Local Government Fund	(5,000)

STATEMENT OF FACT

Section 1 repeals a current standard abatement provision, which is relocated, by section 2 of this bill, into the new Maine Revised Statutes, Title 36, section 142.

Section 2 enacts a standard cancellation and abatement provision.

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

Section 4 enacts a standard provision for collection by warrant.

Section 5 enacts standard tax lien provision and responds to the need for a more effective and expeditious means of collecting sales, use and income taxes which are past due and as to which no further admin-

1 istrative or judicial review is available. Provision
2 is made for a levy power vested in the State Tax As-
3 sessor, permitting him to appropriate certain liquid
4 assets of delinquent taxpayers in order to satisfy
5 their tax debts. Specifically, the bill empowers the
6 State Tax Assessor to levy upon cash, bank accounts,
7 accounts receivable, life insurance and endowment
8 contracts, securities, other choses in action and
9 rights to receive money which are in existence at the
10 time of the levy. It further permits him to garnish
11 salaries and wages on a continuing basis until the
12 tax delinquency is discharged.

13 Exercise of the levy power is carefully delimited
14 in order to ensure adequate due process protections.
15 In view of the fact that the taxes which may be col-
16 lected by means of a levy are finalized debts as to
17 which due opportunity for review has already been af-
18 farded, the due process protections provided in this
19 bill are considerably in excess of what is constitu-
20 tionally required.

21 Prior to exercising the levy power, the State Tax
22 Assessor must issue a demand letter. Only if the
23 taxpayer fails to make payment within 10 days of the
24 demand may his property be subjected to levy. Upon
25 expiration of the 10-day period, the levy may be ef-
26 fected by a physical seizure of property in the
27 taxpayer's possession, or by service of a notice of
28 levy upon a 3rd party. Special rules govern physical
29 seizure without written taxpayer consent; application
30 must be made for an ex parte court order; levies upon
31 salaries and wages, a portion of which is exempt; and
32 levies upon life insurance and endowment contracts.
33 A 3rd party served with a notice of levy is required
34 to comply with its terms. Failure to do so without
35 reasonable cause results in liability for a penalty.

36 The State Tax Assessor is authorized to sell
37 property levied upon where necessary to enable him to
38 apply the proceeds to the tax delinquency. The sale
39 must be held within 60 days of the date on which
40 physical possession was obtained and must be con-
41 ducted in a commercially reasonable manner.

42 Third parties claiming that property in which
43 they have an interest was wrongfully made the subject

1 of a notice of levy are accorded a right of action
2 against the State Tax Assessor. Recovery in such an
3 action is limited to the value of property levied
4 upon and may not exceed the proceeds of a sale con-
5 ducted in accordance with the law.

6 It also enacts a standard trust fund provision.

7 Section 6 enacts a standard criminal provision.

8 Section 7 provides for an additional penalty of
9 \$25 or 25% of the tax, whichever is greater, for fi-
10 nal amounts due and not paid within 10 days of de-
11 mand. Taxpayers who withhold payment beyond the de-
12 mand notice occasion significant additional collec-
13 tion expenses. It is unfair to expect responsible
14 taxpayers to bear these expenses. Accordingly, the
15 recovery of at least a portion of these additional
16 expenses should be effected from the delinquent tax-
17 payers. This provides an incentive for more timely
18 payment. The State Tax Assessor may waive or abate
19 any penalty.

20 Section 8 recognizes that recent changes in the
21 application of the sales and use tax to purchases by
22 industrial users included the substitution of "pro-
23 duction" for "manufacture" in other parts of the law.
24 The proposed change is necessary to reestablish con-
25 sistency in wording of the definition of "retail
26 sale." Additionally, the interchange of the 9th and
27 10th sentences provides a more orderly arrangement in
28 the subsection.

29 Section 9 establishes a procedure for the suspen-
30 sion of a sales tax registration certificate for a
31 registrant who fails to pay a finalized tax liabili-
32 ty. In order to avoid the continuing disregard of
33 sales tax laws, it is essential to provide an expedi-
34 tious mechanism for discouraging continued disregard
35 of the law. Taxpayers who responsibly seek to dis-
36 charge finalized tax liabilities would not be subject
37 to suspension.

38 Section 10 exempts food purchased with food
39 stamps from the sales tax. Candy and soda may be pur-
40 chased with food stamps and these are currently tax-
41 able, but federal law prohibits their continued taxa-

1 tion if the State wishes to participate in the food
2 stamp program.

3 Sections 11 through 14 recognize that the Legis-
4 lature recently increased from 6 to 12 months the
5 term of use outside Maine required for exemption from
6 use tax on property brought into Maine. The proposed
7 changes are required to establish uniform standards
8 for property immediately removed by nonresidents.

9 Section 15 corrects a recently changed law refer-
10 ence.

11 Sections 16 and 17 are necessary to eliminate in-
12 consistencies in the law relating to sales tax exemp-
13 tions.

14 Section 18 repeals current trust fund provisions
15 of sales and use tax laws which are replaced, in
16 part, by the Maine Revised Statutes, Title 36, sec-
17 tion 177, enacted by section 5 of this new draft and,
18 in part, by Title 36, section 187, enacted by section
19 7 of this new draft.

20 Sections 19, 20 and 22 repeal current warrant
21 provisions of sales and use tax laws. Standard coun-
22 terpart is the Maine Revised Statutes, Title 36, sec-
23 tion 173, enacted by section 4 of this new draft.

24 Sections 21 and 23 repeal current tax lien provi-
25 sions of sales and use tax laws. Standard counterpart
26 is the Maine Revised Statutes, Title 36, section 175,
27 enacted by section 5 of this new draft.

28 Section 24 repeals cancellation and abatement
29 provision of sales and use tax laws. Standard coun-
30 terpart is the Maine Revised Statutes, Title 36, sec-
31 tion 142, enacted by section 2 of this new draft.

32 Section 25 is necessary because Public Law 1985,
33 chapters 411 and 447, both amended the Maine Revised
34 Statutes, Title 36, section 2013. As chapter 447 did
35 not recognize the amendments enacted by chapter 411,
36 the proposed change is required to eliminate a con-
37 flict in the language of Title 36, section 2013.

38 Section 26 provides changes which are required to

1 clarify an ambiguity on the requirements for eligi-
2 bility for refund of sales or use tax on depreciable
3 machinery and equipment for use in commercial fishing
4 or agricultural production and to ensure equitable
5 treatment for leased property.

6 Section 27 conforms the Mining Excise Tax law to
7 the new estimate tax provisions contained in section
8 35 of this new draft.

9 Section 28 repeals trust fund provisions of the
10 Use Fuel Tax Act. Standard counterpart is the Maine
11 Revised Statutes, Title 36, section 177, enacted by
12 section 5 of this new draft.

13 Section 29 corrects an obvious statutory defi-
14 ciency.

15 Sections 30 and 31 repeal warrant and lien provi-
16 sions of the Use Fuel Tax Act. Standard counterparts
17 are the Maine Revised Statutes, Title 36, sections
18 173 and 175, enacted, respectively, by sections 4 and
19 5 of this new draft.

20 Section 32 is intended to conform the real estate
21 transfer tax exemption provisions of the Maine Re-
22 vised Statutes, Title 36, section 4641-C, with the
23 exception provisions of Title 36, section 4641-D,
24 which exclude any conveyance to or from the govern-
25 ment from the requirement to file a declaration of
26 value.

27 Section 33 recognizes that, in 1984, federal law
28 was changed thus, the reference to the United States
29 Internal Revenue Code of 1954, Section 37, credit for
30 the elderly should now read the United States Inter-
31 nal Revenue Code, Section 22. Since section 22 ap-
32 plies to both elderly and disabled, a limitation ex-
33 cluding the disabled is required.

34 Section 34 changes the structure of the addition-
35 al tax provision of the income tax law. The amount of
36 the Maine minimum tax and alternative minimum tax
37 will no longer be imposed in addition to the regular
38 individual or corporate income tax. Instead, taxpay-
39 ers will be liable for the larger of a minimum tax,
40 alternative minimum tax or the regular income tax.

1 This provision more closely aligns Maine law with
2 federal law in the imposition of the taxes.

3 Section 35 is intended to eliminate the require-
4 ment to file a declaration of estimated income tax
5 and otherwise simplify Maine estimated income tax
6 law. Additionally, it extends the requirement for the
7 payment of estimate installments to apply to all tax
8 liability for a particular year as does the United
9 States Internal Revenue Code, unless the taxpayer had
10 less than \$500 tax liability for the prior year. The
11 current exclusion for liabilities of \$500 or less
12 continues.

13 Sections 35 also removes provisions in the cur-
14 rent estimated income tax law which are no longer re-
15 quired because of section 34 of this new draft.

16 Sections 36, 37 and 38 repeal current trust fund
17 provisions of the income tax laws. Standard counter-
18 part is the Maine Revised Statutes, Title 36, section
19 177, enacted by section 5 of this new draft.

20 Sections 39 and 40 result from a recent decision
21 entitled State of Maine v. John W. Lane, Jr., et.
22 al., 495 A2d. 773 (Me. 1985), in which the Law Court
23 held that, as presently written, the Maine Revised
24 Statutes, Title 36, section 5331, does not penalize
25 an employer who deducts and withholds Maine income
26 tax from the wages of his employees and who
27 "truthfully accounts for" the state income tax funds
28 withheld but intentionally fails to pay those employ-
29 ee income tax funds over to the State.

30 Since the payment over to the State Tax Assessor
31 of employee income tax collected by an employer is a
32 primary purpose of the laws which create the obliga-
33 tion and penalize a violation, this new draft makes
34 it clear that the intentional failure of an employer
35 to pay taxes actually withheld over to the designated
36 state agent is a crime under the Maine Revised Stat-
37 utes, Title 36, section 184, even if the employer
38 files the proper forms.

39 The repeal of the Maine Revised Statutes, Title
40 36, section 5331, arises from the enactment of a uni-
41 form criminal penalty provision in section 6 of this

1 new draft. The provisions of section 6 correct the
2 deficiency which arose in Lane.

3 A related law, the Maine Revised Statutes, Title
4 36, section 5274-A, provides for civil liability of
5 those required by law to collect, truthfully account
6 for and pay over the tax imposed by Title 36, Part 8,
7 Income Taxes. This civil penalty section may be sub-
8 ject to an interpretation similar to the Law Court's
9 interpretation of section 5331 in Lane. In order to
10 clarify the existing law, to avoid the loss of state
11 revenue which may be occasioned by such an interpre-
12 tation, and the secure civil liability at least as
13 broad as the United States Supreme Court found in the
14 comparable federal statute, (Slodov v. United States,
15 436 U.S. 238) (1978), the new draft makes it clear
16 that the willful failure to truthfully account for or
17 the willful failure to pay the tax funds by one re-
18 quired to do so results in civil liability in the
19 amount of the tax not truthfully accounted for or not
20 paid over. The existing civil penalty for willful
21 failure to collect the tax and for willful attempts
22 to evade or defeat the tax or the payment of the tax
23 remains unchanged.

24 Section 41 repeals current 10-day demand provi-
25 sion of income tax laws. Standard counterpart is the
26 Maine Revised Statutes, Title 36, section 170, en-
27 acted by section 3 of this new draft.

28 Sections 42 and 43 repeal current warrant provi-
29 sions of income tax laws. Standard counterpart is the
30 Maine Revised Statutes, Title 36, section 173, en-
31 acted by section 4 of this new draft.

32 Sections 44 and 45 repeal current tax lien provi-
33 sions of income tax laws. Standard counterpart is the
34 Maine Revised Statutes, Title 36, section 175, en-
35 acted by section 5 of this new draft.

36 Section 47 standardizes the assessment date for
37 the Employment Rehabilitation Fund and avoid it com-
38 ing due at odd times during the year.

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