

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 (New Draft of H.P. 1638, L.D. 2310)
3 SECOND REGULAR SESSION
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE
6

7 Legislative Document

No. 2393

8
9 H.P. 1700

House of Representatives, April 14, 1986

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

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 to Make Certain Revisions in the Maine
20 Tax Laws and Appropriations from the
21 General Fund.
22

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

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

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

32 Whereas, this additional revenue is **necessary** to
33 fund the proposed Maine State Budget in **fiscal** year
34 1986-87; and

1 Whereas, in the judgment of the Legislature,
2 these facts create an emergency within the meaning of
3 the Constitution of Maine and require the following
4 legislation as immediately necessary for the preser-
5 vation of the public peace, health and safety; now,
6 therefore,

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

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

11 2-C. Fabrication services. "Fabrication ser-
12 vices" means the production, fabrication or process-
13 ing of tangible personal property, for a considera-
14 tion for persons who furnish, either directly or in-
15 directly, the materials used in the production, fab-
16 rication or processing. It includes the production
17 of custom computer programming or the modification of
18 computer programs. "Fabrication services" does not
19 include the production, fabrication or processing of
20 tangible personal property if a sale to the consumer
21 of the tangible personal property so produced, fabri-
22 cated or processed would be exempt or otherwise not
23 subject to tax under chapters 211 to 225, or if the
24 services are purchased by an exempt entity.

25 Sec. 2. 36 MRSA §1752, sub-§3-A is enacted to
26 read:

27 3-A. Food products. "Food products" except as
28 otherwise provided, includes cereals and cereal
29 products; milk and milk products, other than candy
30 and confectionery, but including ice cream; oleomar-
31 garine; meat and meat products; fish and fish
32 products; eggs and egg products; vegetables and vege-
33 table products; fruit and fruit products, including
34 pure fruit juices; spices, condiments and salt; sugar
35 and sugar products other than candy and confection-
36 ery; coffee and coffee substitutes; and tea, cocoa
37 and cocoa products, other than candy and confection-
38 ery.

39 "Food products" does not include spirituous, malt or
40 vinous liquors; soft drinks, sodas or beverages such

1 as are ordinarily dispensed at bars or soda fountains
2 or in connection therewith; medicines, tonics, vita-
3 mins and preparations in liquid, powdered, granular,
4 tablet, capsule, lozenge or pill form, sold as die-
5 tary supplements or adjuncts, except when sold on the
6 prescription of a physician; and water, including
7 mineral bottled and carbonated waters and ice.

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

11 18-A. Telephone or telegraph service. "Telephone
12 or telegraph service" means all telecommunications or
13 telegraph service, including installation or use of
14 telecommunication or telegraphic equipment, but not
15 including telecommunications or telegraph service
16 originating or terminating outside this State.
17 "Telecommunications and telegraphic equipment" means
18 any 2-way interactive communications device, system
19 or process for transmitting or receiving electromag-
20 netic signals and capable of exchanging audio, data
21 base or textual information. Telecommunications ser-
22 vice includes access services provided by a local ex-
23 change carrier to an interstate or intrastate inter-
24 exchange carrier. Notwithstanding subsection 11, a
25 sale of access services shall be considered a retail
26 sale. "Telephone or telegraph service" does not in-
27 clude directory advertising service.

28 Sec. 4. 36 MRSA §1760, sub-§3, as amended by PL
29 1981, c. 163, §3, is repealed and the following en-
30 acted in its place:

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

32 A. Meals served on or off the premises of the
33 retailer;

34 B. Drinks or food furnished, prepared or served
35 for consumption at tables, chairs or counters, or
36 from trays, glasses, dishes or other tableware
37 provided by the retailer;

38 C. Those products which ordinarily are sold by
39 the retailer for immediate consumption on or near
40 the location of the retailer, even though the

1 products are sold on a "take out" or "to go" or-
2 der and are actually packaged or wrapped and
3 taken from the premises;

4 D. Those made from a retail location from which
5 food ordinarily is sold for consumption without
6 further preparation or storage, even though the
7 products are packaged or wrapped in bulk quanti-
8 ties; and

9 E. Sales of heated food or drinks; sandwiches;
10 ice cream or ice milk in a cone or cup, including
11 sundaes, sodas, frappes and the like, ice cream
12 or ice milk novelties and popsicles.

13 Sec. 5. 36 MRSa §1811, first ¶, as amended by PL
14 1983, c. 859, Pt. M, §§7 and 13, is further amended
15 to read:

16 A tax is imposed on retail sales at the rate of
17 5% on the value of all tangible personal property, on
18 telephone and telegraph service and, on extended ca-
19 ble television service sold at retail in this State,
20 and on fabrication services and upon the rental
21 charged for living quarters in hotels, rooming
22 houses, tourist or trailer camps and the rental
23 charged for automobiles rented on a short-term basis,
24 other than a rental charged to a person engaged in
25 the business of renting automobiles, and at the rate
26 of 7% on the value of the rental charged for living
27 quarters in hotels, rooming houses, tourist or trail-
28 er camps, and the rental charged for automobiles
29 rented on a short-term basis, other than a rental
30 charged to a person engaged in the business of
31 renting automobiles and measured by the sale price,
32 except as in chapters 211 to 225 provided. Retailers
33 shall pay such tax at the time and in the manner pro-
34 vided, and it shall be in addition to all other
35 taxes.

36 Sec. 6. 36 MRSa §1812, as amended by PL 1969, c.
37 295, §3, is repealed and the following enacted in its
38 place:

39 §1812. Adding tax to sale price

1 Every retailer shall add the sales tax imposed by
2 chapters 211 to 225, or the average equivalent of
3 that tax, to his sale price, except as otherwise pro-
4 vided, and when added the tax shall constitute a part
5 of the price, shall be a debt of the purchaser to the
6 retailer until paid and shall be recoverable at law
7 in the same manner as the purchase price. When the
8 sale price shall involve a fraction of a dollar, the
9 tax shall be added to the sale price upon the follow-
10 ing schedules:

11 A. If the tax rate is 5%:

<u>Amount of Sale Price</u>	<u>Amount of Tax</u>
13 \$0.01 to \$0.10, inclusive	0¢
14 .11 to .20, inclusive	1¢
15 .21 to .40, inclusive	2¢
16 .41 to .60, inclusive	3¢
17 .61 to .80, inclusive	4¢
18 .81 to 1.00, inclusive	5¢

19 B. If the tax rate is 7%:

<u>Amount of Sale Price</u>	<u>Amount of Tax</u>
21 \$0.01 to \$0.07, inclusive	0¢
22 .08 to .21, inclusive	1¢
23 .22 to .35, inclusive	2¢
24 .36 to .49, inclusive	3¢
25 .50 to .64, inclusive	4¢
26 .65 to .78, inclusive	5¢
27 .79 to .92, inclusive	6¢
28 .93 to 1.00, inclusive	7¢

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

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

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

1 Sec. 7. 36 MRS §1861, as amended by PL 1969, c.
2 295, §4, is repealed and the following enacted in its
3 place:

4 §1861. Purchase of tangible personal property

5 A tax is imposed on the storage, use or other
6 consumption in this State of purchases, which if the
7 sale occurred or had occurred in this State will be
8 subject to tax under section 1764 or 1811. A tax is
9 imposed at the rate provided in section 1811 on the
10 sale price on these purchases. Every person so stor-
11 ing, using or otherwise consuming is liable for the
12 tax until he has paid the tax or has taken a receipt
13 from his seller, as duly authorized by the State Tax
14 Assessor, showing that the seller has collected the
15 sales or use tax, in which case the seller shall be
16 liable for it. Retailers registered under section
17 1754 or 1756 shall collect the tax and make remit-
18 tance to the State Tax Assessor. The amount of the
19 tax payable by the purchaser shall be that provided
20 in the case of sales taxes by section 1812. When
21 tangible personal property purchased for resale is
22 withdrawn from inventory by the retailer for his own
23 use, use tax liability accrues at the date of with-
24 drawal.

25 Sec. 8. 36 MRS §1862 is amended to read:

26 §1862. Taxes paid in other jurisdictions

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

1 Sec. 9. 36 MRSA §2511, as amended by PL 1983, c.
2 479, §1, is repealed.

3 Sec. 10. 36 MRSA §2512, as repealed and replaced
4 by PL 1973, c. 727, §3, is amended to read:

5 §2512. Annual returns to Superintendent of Insurance

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

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

25 §2513. Tax on premiums and annuity considerations

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

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

1 §2514. Applicability of provisions

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

24 Sec. 13. 36 M RSA §2515 is amended to read:

25 §2515. Amount of tax

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

33 Sec. 14. 36 M RSA §2523, sub-§1, as enacted by PL
34 1983, c. 479, §3, is repealed and the following en-
35 acted in its place:

36 1. Tax on insurance companies. Every insurance
37 company or association which does business or col-
38 lects premiums or assessments for workers' compensa-
39 tion insurance in this State shall, for the privilege
40 of doing business in this State and in addition to
41 any other taxes imposed for that privilege, pay a tax

1 of 2% upon all gross direct premiums written, whether
2 in cash or in notes absolutely payable on contracts
3 written on risks located or resident in the State for
4 workers' compensation insurance, less return premiums
5 thereon and less all dividends paid to policyholders.

6 The tax levied under this section is in lieu of the
7 taxes levied under section 2513, insofar as those
8 taxes are based on workers' compensation insurance
9 premiums.

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

13 §3636. Settlement required

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

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

27 CHAPTER 704

28 TOBACCO PRODUCTS TAX

29 §4401. Definitions

30 As used in this chapter, unless the context oth-
31 erwise indicates, the following terms have the fol-
32 lowing meanings.

33 1. Business. "Business" means any trade, occu-
34 vation, activity or enterprise engaged in for the
35 purpose of selling or distributing tobacco products
36 in this State.

1 2. Distributor. "Distributor" means any person
2 engaged in the business of producing or manufacturing
3 tobacco products in this State for sale in this
4 State, any person engaged in the business of selling
5 tobacco products in this State who brings, or causes
6 to be brought, into this State any tobacco products
7 for sale to a retailer or any person engaged in the
8 business of selling tobacco products who ships or
9 transports tobacco products to retailers for sale in
10 this State.

11 3. Manufacturer. "Manufacturer" means a person
12 who manufactures and sells tobacco products.

13 4. Place of business. "Place of business" means
14 any place where tobacco products are sold or where
15 tobacco products are manufactured, stored, or kept
16 for the purpose of sale or consumption, including any
17 vessel, vehicle, airplane, train or vending machines.

18 5. Retailer. "Retailer" means any person en-
19 gaged in the business of selling tobacco products to
20 ultimate consumers.

21 6. Retail outlet. "Retail outlet" means a place
22 of business from which tobacco products are sold to
23 consumers. Vending machines shall be considered a
24 retail outlet.

25 7. Sale. "Sale" means any transfer, exchange,
26 barter or gift in any manner or by any means whatso-
27 ever, for a consideration. It shall include a gift
28 for advertising by a person engaged in the business
29 of selling tobacco products.

30 8. Subjobber. "Subjobber" means any person oth-
31 er than a manufacturer or distributor who buys from a
32 distributor tobacco products upon which a tax imposed
33 by this chapter has been paid and sells them to per-
34 sons other than the ultimate consumers.

35 9. Tobacco products. "Tobacco products" means
36 cigars; cheroots; stogies; periques' granulated, plug
37 cut, crimp cut, ready rubbed, and other smoking to-
38 bacco; snuff; snuff flour; cavendish; plug and twist
39 tobacco; finecut and other chewing tobaccos; shorts;
40 refuse scraps, clippings, cuttings and sweepings of

1 tobacco; and other kinds and forms of tobacco, pre-
2 pared in such manner as to be suitable for chewing or
3 smoking in a pipe or otherwise, or both for chewing
4 and smoking; but shall not include tobacco products
5 which are subject to the tax provided by chapter 703.

6 10. Unclassified importer. "Unclassified im-
7 porter" means any person, firm, corporation or asso-
8 ciation within this State, other than a distributor,
9 as defined, who shall import, receive or acquire from
10 without the State, tobacco products for use or con-
11 sumption within the State.

12 11. Wholesale sales price. "Wholesale sales
13 price" means the established price for which a manu-
14 facturer sells tobacco products to a distributor, ex-
15 clusive of any discount or other reduction.

16 §4402. Licenses

17 Every person engaging in the business of selling
18 tobacco products as a distributor shall secure a li-
19 cence from the tax assessor before engaging in that
20 business. Every license application shall be made on
21 a form prescribed by the tax assessor and shall state
22 the name and address of the applicant, address of his
23 principal place of business, and such other informa-
24 tion as the tax assessor may require for the proper
25 administration of this chapter. The application
26 shall be accompanied by a fee of \$25, except that
27 there shall be no fee required for distributors or
28 unclassified importers licensed under chapter 703. A
29 person without the State who ships or transports to-
30 bacco products to retailers in this State shall make
31 application as a distributor and be granted by the
32 tax assessor a license subject to all the provisions
33 of this chapter and agree, upon applying for a li-
34 cence, to submit his books, accounts and records to
35 examination by the Bureau of Taxation during reason-
36 able business hours, and to accept service of process
37 by mail when service is made in any proceeding in-
38 volving enforcement of this chapter.

39 Each unclassified importer before importing, re-
40 ceiving or acquiring tobacco products from without
41 the State shall secure a license from the tax asses-
42 sor. There shall be no fee for that license.

1 Each license issued shall expire on July 31st of
2 each year unless sooner revoked by the tax assessor.
3 The license shall be prominently displayed on the
4 premises covered by the license and no license may be
5 transferred to any other person.

6 The tax assessor may revoke or suspend the li-
7 cence or licenses of any person for violation of this
8 chapter applicable to the sale of tobacco products.
9 No license may be revoked, canceled or suspended un-
10 til after notice and hearing by the tax assessor.

11 §4403. Tax on tobacco products

12 A tax is imposed on all tobacco products at the
13 rate of 25% of the wholesale sales price. The tax
14 shall be imposed at the time the distributor or un-
15 classified importer brings or causes to be brought
16 into this State tobacco products that are for sale to
17 consumers or to retailers or for use or at the time
18 tobacco products are manufactured or fabricated in
19 this State for sale in this State.

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

24 §4404. Returns; payment of tax and penalty

25 Every distributor, or unclassified importer shall
26 on or before the last day of each month render, on
27 forms to be furnished by the tax assessor, a report
28 together with payment of the tax due under this chap-
29 ter to the tax assessor stating the quantity and the
30 wholesale sale price of all tobacco products held,
31 purchased, manufactured, brought in or caused to be
32 brought in from without the State or shipped or
33 transported to retailers within the State during the
34 preceding calendar month. Every distributor or un-
35 classified importer shall keep a complete and accu-
36 rate record at his principal place of business to
37 substantiate all receipts of tobacco products; this
38 record shall be preserved for a period of 2 years in
39 such manner as to insure permanency and accessibility
40 for inspection.

1 Such monthly reports shall contain such further
2 information as the tax assessor shall prescribe and
3 shall show a credit for any tobacco products exempted
4 as provided in section 4403. Records shall be main-
5 tained to substantiate the exemption. Tobacco
6 products previously taxed which are returned to a
7 manufacturer because the product has become unfit for
8 use of consumption or unsalable may be taken as a
9 credit on a subsequent return upon receipt of the
10 credit notice from the original supplier.

11 If the monthly report required by this chapter is
12 not filed, or payment is not rendered by the last day
13 of the month the distributor or unclassified importer
14 shall be liable to a penalty of \$1 a day for each day
15 in arrears or 10% of the tax liability, whichever is
16 the greater, together with interest at the rate of 1%
17 per month or fraction thereof due on demand by the
18 tax assessor, and recoverable in a civil action. The
19 tax assessor may waive the penalty for cause.

20 §4405. The tax assessor may estimate liability

21 Whenever any distributor or unclassified importer
22 shall neglect or refuse to make and file any report
23 required by this chapter or shall file an incorrect
24 or fraudulent report, the tax assessor shall from such
25 information as he may obtain fix the amount of taxes,
26 penalties and interest payable and forthwith proceed
27 to collect the amount so fixed.

28 In any action or proceeding for collection of the
29 tobacco products tax, any penalties and interest im-
30 posed in connection with an assessment by the tax as-
31 essor of the tax, penalty or interest due the State
32 shall constitute prima facie evidence of the claim of
33 the State. The burden of proof shall be upon the
34 distributor or unclassified importer to show that the
35 assessment was incorrect and contrary to law.

36 §4406. Inspection of records; civil action for tax

37 The tax assessor or his duly authorized agents
38 shall have authority during reasonable business hours
39 to examine the records, books, papers and any other
40 records of the distributor, unclassified importer,
41 retailer or subjobber to verify the truth and accura-

1 cy of any statement, report or return and whether the
2 tax imposed by this chapter has been fully paid.

3 The tax assessor shall have the power to recom-
4 mend legal proceedings by the Attorney General for
5 the purpose of ascertaining the amount due under this
6 chapter and enforcing the collection of tax, penal-
7 ties and interest thereof.

8 §4407. Appeal procedure

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

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

1 §4408. Penalties; civil action for tax

2 Any person who shall willfully make any false or
3 fraudulent report or return required by this chapter,
4 or who shall make any false statement in any claim or
5 invoices presented to the tax assessor or who shall
6 knowingly present to the tax assessor any claim or
7 invoice containing any false statements, or who shall
8 with intent to defraud, evade or violate any provi-
9 sions of this chapter, or any rules duly made under
10 this chapter, or who shall engage in the State in
11 business as a distributor, without being the holder
12 of a valid license to engage in that business commits
13 a civil violation for which a fine not exceeding
14 \$2,000 may be assessed, payable to the State. When-
15 ever any person fails to pay any tax, interest or
16 penalty due under this chapter within 15 days of de-
17 mand, the Attorney General shall enforce payment
18 thereof in a court of appropriate jurisdiction. In
19 any civil action, records of the quantity of tobacco
20 products held, purchased, manufactured, brought in or
21 caused to be brought in from without the State or
22 shipped or transported to retailers within this State
23 for the period covered by the tax assessor's audit
24 shall be prima facie evidence of such quantities
25 sold, distributed or used during the period covered
26 by the audit on which the tax with interest from the
27 date when it was due, shall be computed and collected
28 and for which amount, with costs, judgment shall be
29 rendered.

30 §4409. Claims

31 The claims of the State for the sums due under
32 this chapter shall be preferred and priority claims
33 in the event of assignment, receivership or bankrupt-
34 cy.

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

37 1-C. Maine adjusted gross income. "Maine ad-
38 justed gross income" has the following meanings.

39 A. "Maine adjusted gross income" means, for a
40 resident individual, the federal adjusted gross
41 income of that individual, as modified by section
42 5122.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 §5160. Imposition of tax

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

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

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

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

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

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

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

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

21 1. Franchise tax on Maine net income.
22 Five-tenths One percent of Maine net income for those
23 taxable entities, as defined in section 5206-B, sub-
24 section 3.

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

28 Sec. 34. 36 MRSA §5206, sub-§4, as enacted by PL
29 1983, c. 842, §2, is repealed.

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

33 1. Affiliated group. "Affiliated group" means a
34 group of 2 or more corporations or taxable entities
35 in which more than 50% of the voting stock of each
36 member corporation or taxable entity is directly or

1 indirectly owned by a common owner or owners, either
2 corporate or noncorporate, or by one or more of the
3 member corporations or taxable entities.

4 2. Maine assets. "Maine assets" means, for any
5 taxable year, a taxable entity's total end of year
6 assets as required to be reported on United States
7 Internal Revenue Service Form 1120, Schedule L, ex-
8 cept for tangible personal property located outside
9 the State.

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

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

23 4. Taxable entity. "Taxable entity" means any
24 financial institution, including any federally
25 chartered financial institution authorized to do
26 business in this State, except a credit union, and
27 any service corporation or subsidiary as defined in
28 Title 9-B, section 131 and any financial institution
29 holding company as defined in Title 9-B, section
30 1011, except that control as defined in section 1011,
31 shall mean ownership of more than 50% of the voting
32 stock owned directly or indirectly, which is or-
33 ganized under the laws of this State or authorized to
34 do business in this State, which at any time during
35 the taxable year realized Maine net income or had
36 Maine assets.

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

38 §5214-A. Credit to beneficiary for accumulation dis-
39 tribution

1 1. General. A beneficiary of a trust whose ad-
2 justed gross income includes all or part of an accu-
3 mulation distribution by such trust, as defined in
4 the United States Internal Revenue Code, Section 665,
5 or its equivalent, shall be allowed a credit against
6 the tax otherwise due under this Part for all or a
7 proportionate part of any tax paid by the trust under
8 this Part for any preceding taxable year which would
9 not have been payable if the trust had in fact made
10 distribution to its beneficiaries at the times and in
11 the amounts specified in the United States Internal
12 Revenue Code, Section 665, or its equivalent.

13 2. Limitation on credit. The credit under this
14 section shall not reduce the tax otherwise due from
15 the beneficiary under this Part to an amount less
16 than would have been due if the accumulation distri-
17 bution or his part of the accumulation distribution
18 were excluded from his adjusted gross income.

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

21 An income tax return with respect to the tax im-
22 posed by this Part shall be made, on such forms as
23 may be required by the State Tax Assessor, by the
24 following:

25 Sec. 38. 36 MRSA §5220, sub-§2, as amended by PL
26 1979, c. 711, Pt. H, §6, is further amended to read:

27 2. Nonresident individuals. Every nonresident
28 individual who has taxable income for the year from
29 sources within this State- :

30 A. Who has adjusted gross income from sources in
31 this State of more than \$1,000 if single and
32 \$2,000 if married; or

33 B. Who having attained the age of 65 before the
34 close of his taxable year has adjusted gross in-
35 come from sources within this State of more than
36 \$2,000 if single and more than \$3,000 if married
37 and his spouse has not yet attained the age of 65
38 and more than \$4,000 if both have attained the
39 age of 65 before the close of the taxable year-;

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

3 C. ¶ Except as provided in subsection 2, if the
4 federal income tax liabilities of husband and
5 wife, other than a husband and wife described in
6 subsection 2, are determined on a joint federal
7 return, they shall file a joint return under this
8 Part and their tax liabilities shall be joint and
9 several.

10 Sec. 40. 36 MRS §5221, sub-§2, as enacted by
11 P&SL 1969, c. 154, §F, is repealed and the following
12 enacted in its place:

13 2. Nonresidents. If both husband and wife are
14 nonresidents and one has no Maine-source income, the
15 spouse having Maine-source income shall file a sepa-
16 rate Maine nonresident income tax return, as a single
17 individual, in which event his tax liability shall be
18 separate; but they may elect to determine their joint
19 taxable income as nonresidents, in which case their
20 liabilities shall be joint and several.

21 If either husband or wife is a resident and the other
22 is a nonresident, they shall file separate Maine in-
23 come tax returns as single individuals, in which
24 event their tax liabilities shall be separate; but
25 they may elect to determine their joint taxable in-
26 come as if both were residents and, in that case,
27 their liabilities shall be joint and several.

28 Sec. 41. 36 MRS §5224-A, as enacted by PL 1979,
29 c. 711, Pt. H, §8, is repealed and the following en-
30 acted in its place:

31 §5224-A. Return of part-year resident

32 If an individual changes his status as a resident
33 individual or nonresident individual during his tax-
34 able year, he shall file a nonresident return pursu-
35 ant to section 5220, subsection 2. His tax shall be
36 computed, pursuant to section 5111, subsection 4, as
37 if he were a nonresident individual, except that the
38 numerator of the apportionment ratio shall be com-
39 prised of his Maine adjusted gross income, as defined
40 in section 5102, subsection 1-C, paragraph A, for the

1 portion of the taxable year during which he was a
2 resident individual, plus his Maine adjusted gross
3 income as defined in section 5102, subsection 1-C,
4 paragraph B, for the portion of the taxable year dur-
5 ing which he was a nonresident individual. The part-
6 year resident shall also be entitled to the credit
7 provided by section 5127, subsection 1, computed as
8 if the individual's Maine adjusted gross income for
9 the entire year were comprised only of that portion
10 which is attributed to the portion of the year during
11 which he was a resident individual.

12 Sec. 42. Appropriation. The following funds are
13 appropriated from the General Fund to carry out the
14 purposes of this Act.

15 1986-87

16 FINANCE AND ADMINISTRATION,
17 DEPARTMENT OF

18	Bureau of Taxation	
19	Positions	(5)
20	Personal Services	\$181,200
21	All Other	45,500
22	Capital Expenditures	45,500
23	Total	<u>\$272,200</u>

24 Provides funding for
25 one director, one
26 certified public ac-
27 countant, one com-
28 puter systems ana-
29 lyst and one comput-
30 er programmer ana-
31 lyst for tax en-
32 forcement and one
33 Clerk IV for admin-
34 istration of tobacco
35 products tax.

36 CORRECTIONS, DEPARTMENT OF

37	Fuel - Corrections	
38	All Other	\$(123,800)

39 DEFENSE AND VETERANS' SER-
40 VICES, DEPARTMENT OF

1 Military Training and
 2 Operations
 3 All Other \$(67,250)

4 FINANCE AND ADMINISTRATION,
 5 DEPARTMENT OF

6 Buildings and Grounds
 7 Operations
 8 All Other \$(156,500)

9 MENTAL HEALTH AND MENTAL
 10 RETARDATION, DEPARTMENT OF

11 Fuel for Institutions -
 12 Mental Health and Mental
 13 Retardation
 14 All Other \$(152,450)

15 Deappropriates funds
 16 no longer necessary
 17 because of the drop
 18 in petroleum prices
 19 and the decrease in
 20 usage because of en-
 21 ergy conservation
 22 throughout State
 23 Government.

24
 25 TOTAL APPROPRIATION \$(227,800)

26 Sec. 43. Application. Sections 17 and 19 to 41
 27 shall apply to tax years beginning or or after Janu-
 28 ary 1, 1986.

29 Emergency clause. In view of the emergency cited
 30 in the preamble, sections 1 to 16 and section 18 of
 31 this Act shall take effect June 1, 1986. The remain-
 32 der of this Act shall take effect when approved.

33 FISCAL NOTE

	<u>G.F.</u>	<u>L.C.F.</u>
34		
35 Sections 1, 5, 7 and 8 (Fabri-		
36 cation Services)	\$2,000,000	\$107,500

1	Sections 2 and 4 (Certain food		
2	products)	650,000	35,000
3	Section 3 (Access charges)	5,694,000	306,000
4	Sections 5 and 6 (Lodging)	3,300,000	175,000
5	Sections 5 and 6 (Auto rent-		
6	als)	284,700	15,300
7	Sections 9 to 14 and 18 (In-		
8	surance)	1,420,000	
9	Section 15 (Inheritance tax)	500,000	
10	Section 16 (Tobacco products		
11	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 fran-		
16	chise tax)	949,000	51,000
17	Section 42 (Enforcement)	1,250,000	67,000

18 STATEMENT OF FACT

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

24 The amendment also equalizes the insurance premi-
25 um tax by raising the tax on domestic insurers to 2%,
26 establishes an excise tax on tobacco products other
27 than cigarettes and changes the basis for the calcu-
28 lation of income tax on nonresidents. It also facili-
29 tates the settlement of estates, increases and clari-
30 fies the bank franchise tax and provides appropria-
31 tions for increased tax enforcement and
32 deappropriations because of reduced fuel costs.

33 7449041186