L.D. 1244

(Filing No. H - 710)

STATE OF MAINE
HOUSE OF REPORESENTATIVES
113TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 928, L.D. 1244, Bill, "AN ACT to Amend the Law Relating to Unitary Taxation of Corporations."

Amend the bill by striking out everything after the enacting clause and inserting in its place the following:

'**Sec. 1. 36 MRSA §5102, sub-§6-A** is enacted to read:

6-A. 80-20 corporation. "80-20 corporation" means a corporation more than 80% of the aggregate property and payroll of which is located outside the 50 states of the United States and the District of Columbia and none of the property and payroll of which is located in this State.

Sec. 2. 36 MRSA §5102, sub-§8, as amended by PL 1983, c. 571, §14, is further amended to read:

8. Maine net income. "Maine net income" means, for any taxable year for any corporate taxpayer, the taxable income of that taxpayer for that taxable year under the laws of the United States as modified by ~~sections~~ section 5200-A ~~and 5202-B and allocated or apportioned~~ and apportionable to this State under chapter 821. To the extent that it derives from a unitary business carried on by 2 or more members of an affiliated group, the Maine net income of a

corporation shall be determined by apportioning that part of the federal taxable income of the entire group which derives from the unitary business, except income of an 80-20 corporation.

Sec. 3. 36 MRSA §5142, sub-§6, as enacted by P&SL 1969, c. 154, §F, is amended to read:

6. Apportionment. If a business, trade, profession or occupation is carried on partly within and partly without this State, the items of income and deduction derived from or connected with sources within this State shall be determined as ~~allocated or~~ apportioned to this State under chapter 821 or in the case of the rendering of purely personal services by an individual under regulations to be prescribed by the assessor.

Sec. 4. 36 MRSA §5200-A, sub-§2, ¶E, as enacted by PL 1985, c. 855, §22, is amended to read:

E. For each of the taxable years ending in 1985 through 1987, 1/3 of the amount by which taxable income was increased for the taxable year ending in 1984 under subsection 1, paragraph G~~.~~;

Sec. 5. 36 MRSA §5200-A, sub-§2, ¶¶F and G are enacted to read:

F. Income which is includable in gross income for federal income tax purposes, but exempt from state income taxes under the laws of this State or of the United States, provided that the amount subtracted shall be decreased by any expenses incurred in production of that income to the extent that these expenses are deductible in determining federal taxable income; and

G. Fifty percent of the apportionable dividend income which the taxpayer received during the taxable year from an affiliated corporation which is not included with the taxpayer in a Maine combined report, except that this modification shall be phased in over 5 years in accordance with the following schedule:

Taxable year beginning in:	Subtractable dividend income:
1988	10%
1989	20%
1990	30%
1991	40%
1992 or thereafter	50%

Sec. 6. 36 MRSA §5206-B, sub-§2, as amended by PL 1987, c. 497, §50, is further amended to read:

2. Maine assets. "Maine assets" means, for any taxable year, a taxable entity's total end of year assets as required to be reported pursuant to the laws of the United States on ~~United States~~ Internal Revenue Service Form 1120, Schedule L, except for tangible personal property and real property located outside the State. The term includes, in the case of a unitary business, the tangible personal property and real property located in the State of any member of the affiliated group which is not subject for the taxable year to taxation under Part 8. This property in the possession of a taxable entity at year-end and located in the State is to be reported as a Maine asset by the possessor taxable entity.

Sec. 7. 36 MRSA §5206-B, sub-§3, as repealed and replaced by PL 1985, c. 783, §35, is amended to read:

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

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

Sec. 8. 36 MRSA c. 821, first 2 lines are repealed and the following enacted in their place:

CHAPTER 821

APPORTIONMENT OF INCOME

Sec. 9. 36 MRSA §5210, sub-§§1, 2 and 4, as enacted by PL 1981, c. 698, §187, are repealed.

Sec. 10. 36 MRSA §5211, sub-§§1 and 2, as enacted by P&SL 1969, c. 154, §F, are amended to read:

1. Apportionment. Any taxpayer, other than a resident individual, estate, or trust, having income from business activity which is taxable both within and without this State, other than the rendering of purely personal services by an individual, shall ~~allocate and~~ apportion his net income as provided in this section. Any taxpayer having income solely from business activity taxable within this State shall ~~allocate or~~ apportion his entire net income to this State.

2. Taxpayer taxable in another state. For purposes of ~~allocation and~~ apportionment of income under this section, a taxpayer is taxable in another state if in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether in fact, the state does or does not.

Sec. 11. 36 MRSA §5211, sub-§§3, 4, 5, 6 and 7, as enacted by P&SL 1969, c. 154, §F, are repealed.

Sec. 12. 36 MRSA §5211, sub-§8, as enacted by P&SL 1969, c. 154, §F, is amended to read:

8. Formula for apportionment of income to State. All ~~business~~ income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is 3.

Sec. 13. 36 MRSA §5211, sub-§17, as enacted by P&SL 1969, c. 154, §F, is amended to read:

17. Variations. If the ~~allocation and~~ apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for, or the tax assessor may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

A. Separate accounting;

B. The exclusion of any one or more of the factors;

C. The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or

D. The employment of any other method to effectuate an equitable ~~allocation and~~ apportionment of the taxpayer's income.

Sec. 14. 36 MRSA §5244, as enacted by PL 1985, c. 675, §§3 and 5, is amended to read:

§5244. Combined report

The combined report required by section 5220, subsection 5, shall include, both in the aggregate and by corporation, a list of the federal taxable income, the modifications provided by section 5200-A, the property, payroll and sales in Maine and everywhere as defined in chapter 821 and the Maine net income of the unitary business. Neither the income nor the property, payroll and sales of a ~~member~~ corporation which is not required to file a federal income tax return or of an 80-20 corporation may be included in the combined report.

FISCAL NOTE

The change in definition of business and nonbusiness income will result in increased revenue of approximately $500,000. The change in unitary taxation will result in a loss of revenue estimated to be $5.3 million. However, due to the phase-in provision of this change, the fiscal year 1989 impact will be a loss of revenue of $1.7 million. Therefore, the net fiscal impact of this bill will be a $1.2 million loss of revenue in fiscal year 1989. Additionally, there would be a significant future cost to the State as the unitary exemption is phased in during the next 2 bienniums.'

STATEMENT OF FACT

This amendment changes what is considered unitary tax to exclude income derived from a business activity located in a United States possession or a foreign country and eliminates the distinction between business and nonbusiness income in determining the income tax base. Present law attempts to distinguish the items of income of corporations, including both single corporations and unitary groups of corporations, which are subject to the income tax of 2 or more states. Business income is apportioned to the states of activity according to an apportionment formula, whereas nonbusiness income is allocated entirely to one state. Although guidelines exist for the classification of various items of income, the distinction is a very complex and troublesome area of the tax law. Taxpayers often are unable to predict the characterization that the State will ascribe to a particular item of income or audit. The proposal would subject all income to the apportionment formula. However, it is recognized that on rare occasions there may arise an income item that is completely unrelated to the operation of the business conducted in Maine and which should be considered outside the apportionment formula.

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Reported by the Majority of the Committee on Taxation
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