

MAINE STATE LEGISLATURE

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L.D. 1536

(Filing No. S-193)

STATE OF MAINE
SENATE
113TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 512, L.D. 1536, Bill, "AN ACT Providing for Administrative Changes in Maine Tax Laws."

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

'Sec. 1. 4 MRSA §807-A, 2nd and 4th ¶¶, as enacted by PL 1985, c. 598, §2, is amended to read:

Upon promulgation of and in accordance with rules adopted by the Supreme Judicial Court, employees of the Bureau of Taxation may serve civil process and represent the bureau in District Court in disclosure proceedings pursuant to Title 14, chapter 502, ancillary to the collection of taxes for which warrants have been issued pursuant to ~~Title 26~~ Title 36, and may represent the State Tax Assessor in arraignment proceedings in District Court in cases in which a criminal complaint has been filed alleging violation of Title 36, section 2113, 3234 or 5332.

This section is repealed on April 1, ~~1988~~ 1989.

Sec. 2. 36 MRSA §176, sub-§3, ¶A, as enacted by PL 1985, c. 691, §5, is amended to read:

A. When the State Tax Assessor determines that any taxpayer is delinquent in the payment of a tax, he may cause a demand letter to be served upon the taxpayer in the manner specified in section 111, subsection 2. The demand letter shall comply in all respects with the provisions of section 171 and shall also state that no further administrative or judicial review is available as to the delinquent amount pursuant to section 151

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1 and, that if payment of that amount is not re-
2 ceived within 10 days of the date of the demand,
3 the State Tax Assessor is empowered by law to
4 levy upon the property of the taxpayer, including
5 his salary or wages, in accordance with this
6 chapter. Notwithstanding the provisions of sec-
7 tion 171, assessments which became final before
8 1987 can be demanded as otherwise provided in
9 this Part before the end of 1988 and a levy en-
10 forced as otherwise provided by this section.

11 **Sec. 3. 36 MRSA §176, sub-§7, as enacted by PL**
12 **1985, c. 691, §5, is amended to read:**

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

30 **Sec. 4. 36 MRSA §177, sub-§1, as enacted by PL**
31 **1985, c. 691, §5, is amended to read:**

32 1. Generally. All sales and use taxes collected
33 by any person from-purchasers pursuant to Part 3, all
34 taxes collected by any person from--purchasere under
35 color of Part 3, which have not been properly re-
36 turned and--credit or credited to the purchasers
37 persons from whom they were collected, all taxes col-
38 lected by any person pursuant to chapter 451 or 459,

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1 and all taxes collected by any person pursuant to
2 chapter 827 shall constitute a special fund in trust
3 for the State Tax Assessor. The liability for the
4 taxes shall be enforceable by assessment and collec-
5 tion, in the manner prescribed in ~~Parts 3, 5 and 8 of~~
6 this Part, against the person and against any offi-
7 cer, director, member, agent or employee of that per-
8 son who, in that capacity, is responsible for the
9 control or management of the funds or finances of
10 that person or is responsible for the payment of that
11 person's taxes. ~~The term "purchasers," as used in~~
12 ~~this subsection, includes persons who have paid rent~~
13 ~~and charges for living quarters in any hotel, rooming~~
14 ~~house, tourist or trailer camp.~~

15 **Sec. 5. 36 MRSA §177, sub-§3**, as enacted by PL
16 1985, c. 691, §5, is amended to read:

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

35 **Sec. 6. 36 MRSA §177, sub-§4**, as enacted by PL
36 1985, c. 691, §5, is amended to read:

37 4. Revocation for nonsegregation. Upon the ex-
38 piration of the 5-day period designated in subsection

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1 3, if any person who is a "retailer" under Part 3 or
2 a fuel supplier, distributor or importer subject to
3 Part 5 fails to make the required payments on account
4 to the State Tax Assessor, the State Tax Assessor may
5 revoke any registration certificate which has been
6 issued on to that person. The revocation shall be
7 reviewable in accordance with section 151.

8 Sec. 7. 36 MRSA §191, sub-§2, ¶K, as amended by
9 PL 1987, c. 19, §2 and PL 1987 c. 43, is repealed and
10 the following enacted in its place:

11 K. The disclosure by a municipal assessor, or by
12 the State Tax Assessor with regard to the unorga-
13 nized territory, of information contained on the
14 declaration of value form required by section
15 4641-B;

16 Sec. 8. 36 MRSA §191, sub-§2, ¶L, as enacted by
17 PL 1987, c. 19, §3 is amended to read:

18 L. The listing of gasoline distributors possess-
19 ing a certificate under section-;

20 Sec. 9. 36 MRSA §191, sub-§2, ¶M and N are en-
21 acted to read:

22 M. The disclosure by employees of the Bureau of
23 Taxation, in connection with their official du-
24 ties relating to any examination, collection ac-
25 tivity, civil or criminal tax investigation or
26 any other offense under this Title, of return in-
27 formation to the limited extent that disclosure
28 is necessary in obtaining information, which is
29 not otherwise available, with respect to the cor-
30 rect determination of tax, liability for tax or
31 the amount to be collected or with respect to the
32 enforcement of this Title; and

33 N. The disclosure by the State Tax Assessor of
34 computerized individual income tax data, without
35 identification by taxpayer name, number or ad-

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1 dress, to a research agency of the Legislature.

2 **Sec. 10. 36 MRSA §305, sub-§1, as amended by PL**
3 **1985, c. 650, §7, is further amended to read:**

4 1. Just value. Certify to the Secretary of State
5 before the first day of February in-the-year-of-the
6 ~~regular-session-of-the-Legislature~~ the equalized just
7 value of all real and personal property in each mu-
8 nicipality and unorganized place which is subject to
9 taxation under the laws of this State, except cap-
10 tured assessed value located within a tax increment
11 financing district, for purposes of calculating state
12 aid for education under Title 20-A, effective for
13 districts designated after December 31, 1986, only
14 75% of the captured assessed value within a tax in-
15 crement financing district is excepted from a
16 municipality's equalized just valuation. Such equal-
17 ized just value shall be uniformly assessed in each
18 municipality and unorganized place and shall be based
19 on 100% of the current market value. It shall sepa-
20 rately show for each municipality and unorganized
21 place the actual or estimated value of all real es-
22 tate which is exempt from property taxation by law or
23 is the captured value within a tax increment financ-
24 ing district. The valuation as filed shall remain in
25 effect until the next valuation is filed and shall be
26 the basis for the computation and apportionment of
27 the state and county taxes;

28 **Sec. 11. 36 MRSA §581-A, as enacted by PL 1973,**
29 **c. 308, §13, is amended to read:**

30 §581-A. Sale of a portion of a parcel of forest land

31 Sale of a portion of a parcel of forest land sub-
32 ject to taxation under this subchapter shall not af-
33 fect the taxation under this subchapter of the re-
34 sulting parcels, unless they-are any is less than 10
35 forested acres in area. Each resulting parcel shall
36 be taxed to the owners under this subchapter until
37 such parcel is withdrawn from taxation under this

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1 subchapter, in which case the penalties provided for
2 in sections 579 and 581 shall apply only to the owner
3 of such parcel. If a parcel resulting from such sale
4 is less than 10 forested acres in area, such parcel
5 shall be considered as withdrawn from taxation under
6 this subchapter as a result of such sale.

7 **Sec. 12. 36 MRSA §610-A**, as reenacted by PL
8 1983, c. 632, Pt. B, §4, is repealed.

9 **Sec. 13. 36 MRSA §708-A**, as enacted by PL 1973,
10 c. 620, §18, is repealed.

11 **Sec. 14. 36 MRSA §1484, sub-§3, ¶C**, as amended
12 by PL 1983, c. 828, §3, is further amended to read:

13 C. If the motor vehicle is owned by a corpora-
14 tion or a partnership, the excise tax shall be
15 paid in the following manner.

16 (1) If it is a corporation or partnership
17 other than one described in subparagraph
18 (2), the excise tax shall be paid to the
19 place in which the registered or main office
20 of that organization is located, except that
21 if the organization has an additional perma-
22 nent place, or places, of business where mo-
23 tor vehicles are customarily kept, the tax
24 on these vehicles shall be paid to the place
25 where such permanent place of business is
26 located. The temporary location of an office
27 and the stationing of vehicles in connection
28 with a construction project of less than 24
29 months duration is not considered to consti-
30 tute a permanent place of business. In the
31 case of a foreign corporation or partnership
32 not maintaining a place of business within
33 the State, the excise tax shall be paid to
34 the State.

35 (2) In the case of corporations described
36 in Title 35, section 2301, any excise taxes

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1 owed shall be paid to the place in which the
2 registered or main office of that organiza-
3 tion is located.

4 (3) If a municipality, county or motor ve-
5 hicle owner feels the excise tax has been
6 improperly levied under the authority of
7 this paragraph, the owner, county or munici-
8 pality may request within 3 years from the
9 date of an excise tax levy a determination
10 of this question by the State Tax Assessor.
11 The State Tax Assessor's determination is
12 limited to the same 3-year period and shall
13 be binding on all parties. Any party may
14 seek review of the determination in accord-
15 ance with the Maine Rules of Civil Proce-
16 dure, Rule 80-B 80-C. Upon notification by
17 the State Tax Assessor of a determination
18 made under this section, any municipality or
19 county which has incorrectly accepted excise
20 tax money, within 30 days of that determina-
21 tion, shall pay the money, together with inter-
22 est at the maximum rate determined by the
23 Treasurer of State, pursuant to section 505,
24 to the municipality or county named in the
25 determination as the proper place of pay-
26 ment.

27 Sec. 15. 36 MRSA §1752, sub-§§1-B, 1-C and 1-D
28 are enacted to read:

29 1-B. Automobile. "Automobile," for purposes of
30 subsection 17-A, paragraph B, means a self-propelled
31 4-wheel motor vehicle designed primarily to carry
32 passengers and not designed to run on tracks.

33 1-C. Business. "Business" includes any activity
34 engaged in by any person or caused to be engaged in
35 by him with the object of gain, benefit or advantage,
36 either direct or indirect.

37 1-D. Casual sale. "Casual sale" means an iso-

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1 lated transaction in which tangible personal property
2 or a taxable service is sold other than in the ordinary
3 course of repeated and successive transactions
4 of like character by the person making the sale. "Cas-
5 ual sales" include transactions by a civic, religi-
6 ous or fraternal organization which is not a regis-
7 tered retailer at a bazaar, fair, rummage sale, pic-
8 nic or similar event, but, if any such organization
9 makes such transactions during more than 8 days dur-
10 ing a calendar year, all such transactions during the
11 calendar year constitute retail sales. The sale by a
12 registered retailer of tangible personal property
13 which that retailer has used in the course of his
14 business is not a "casual sale" if that property is
15 of like character to that sold in the ordinary course
16 of repeated and successive transactions. "Casual
17 sale" does not include any transaction in which tan-
18 gible personal property is sold by a representative
19 for the owner's account when that representative is a
20 registered retailer and the registered retailer shall
21 have the same duties respecting any such transaction
22 as if he had sold on his own account.

23 **Sec. 16. 36 MRSA §1752, sub-§2 is repealed.**

24 **Sec. 17. 36 MRSA §1752, sub-§2-C, as enacted by**
25 **PL 1985, c. 783, §1, is repealed and the following**
26 **enacted in its place:**

27 **2-C. Fabrication services. "Fabrication ser-**
28 **vices" means the production of tangible personal**
29 **property for a consideration for a person who fur-**
30 **nishes, either directly or indirectly, the materials**
31 **used in that production. "Fabrication services" does**
32 **not include the production of tangible personal prop-**
33 **erty if a sale to the consumer of the tangible per-**
34 **sonal property so produced would be exempt or other-**
35 **wise not subject to tax under this Part or if the**
36 **services are purchased by an exempt entity.**

37 **Sec. 18. 36 MRSA §1752, sub-§9-A, as enacted by**
38 **PL 1977, c. 477, §7, is repealed and the following**

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1 enacted in its place:

2 9-A. Primarily. "Primarily," when used in rela-
3 tion to production, means more than 50% of the time.

4 **Sec. 19. 36 MRSA §1752, sub-§9-B,** as amended by
5 PL 1979, c. 541, Pt. A, §220, is repealed and the
6 following enacted in its place:

7 9-B. Production. "Production" means an operation
8 or integrated series of operations engaged in as a
9 business or segment of a business which transforms or
10 converts personal property by physical, chemical or
11 other means into a different form, composition or
12 character from that in which it originally existed.

13 Production includes manufacturing, processing, assem-
14 bling and fabricating operations which meet the
15 definitional requisites.

16 Production does not include biological processes,
17 wood harvesting operations, the severance of sand,
18 gravel, oil, gas or other natural resources produced
19 or severed from the soil or water, or activities such
20 as cooking or preparing drinks, meals, food or food
21 products by a retailer for retail sale. The forego-
22 ing are examples of activities that are not included
23 within the term "production."

24 **Sec. 20. 36 MRSA §1752, sub-§9-C,** as reallocated
25 by PL 1977, c. 696, §273, is repealed.

26 **Sec. 21. 36 MRSA §1752, sub-§10,** as amended by
27 PL 1977, c. 198, §2, is repealed and the following
28 enacted in its place:

29 10. Retailer. "Retailer" means any person who
30 makes retail sales or who is required to register by
31 section 1754 or is registered under section 1756.

32 **Sec. 22. 36 MRSA §1752, sub-§11,** as amended by

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1 PL 1985, c. 691, §8, is repealed and the following
2 enacted in its place:

3 11. Retail sale. "Retail sale" means any sale of
4 tangible personal property, in the ordinary course of
5 business, for consumption or use, or for any purpose
6 other than for resale, except resale as a casual
7 sale, in the form of tangible personal property. "Re-
8 tail sale" also means any sale of a taxable service
9 in the ordinary course of business for any purpose
10 other than for resale, except resale as a casual
11 sale. "Retail sale" includes conditional sales, in-
12 stallment lease sales and any other transfer of tan-
13 gible personal property when the title is retained as
14 security for the payment of the purchase price and is
15 intended to be transferred later. "Retail sale" in-
16 cludes sale of products for internal human consump-
17 tion to a person for resale through coin-operated
18 vending machines when sold to a retailer whose gross
19 receipts from the retail sale of tangible personal
20 property derived through sales from vending machines
21 are more than 50% of his gross receipts, which tax
22 shall be paid by the retailer to the State. "Retail
23 sale" does not include any sale by a personal repre-
24 sentative in the settlement of an estate, unless the
25 sale is made through a retailer, or unless the sale
26 is made in the continuation or operation of a busi-
27 ness; nor does the term include any other casual
28 sale. "Retail sale" does not include the sale of tan-
29 gible personal property which becomes an ingredient
30 or component part of, or which is consumed or de-
31 stroyed or loses its identity directly and primarily
32 in the production of, tangible personal property for
33 later sale or lease, other than lease for use in this
34 State, but shall include fuel and electricity, but
35 shall not include electricity separately metered and
36 consumed in any electrolytic process for the manufac-
37 ture of tangible personal property for later sale,
38 nor any fuel oil or coal, the by-products from the
39 burning of which become an ingredient or component
40 part of tangible personal property for later sale.
41 Tangible personal property is "consumed or destroyed"

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1 or "loses its identity" in that production, if it has
2 a normal physical life expectancy of less than one
3 year as a usable item in the use to which it is ap-
4 plied. "Retail sale" does not include the sale, to a
5 person engaged in the business of renting automo-
6 biles, of automobiles, or integral parts of automo-
7 biles or accessories to automobiles, for rental or
8 for use in an automobile rented, on a short-term ba-
9 sis. "Retail sale" does not include the sale of con-
10 tainers, boxes, crates, bags, cores, twines, tapes,
11 bindings, wrappings, labels and other packing, pack-
12 aging and shipping materials when sold to persons for
13 use in packing, packaging or shipping tangible per-
14 sonal property sold by them or upon which they have
15 performed the service of cleaning, pressing, dyeing,
16 washing, repairing or reconditioning in their regular
17 course of business and which are transferred to the
18 possession of the purchaser of such tangible personal
19 property. "Retail sale" does not include the provi-
20 sion of meals or lodging to employees at their place
21 of employment when the value of those meals or that
22 lodging is allowed as a credit toward the wages of
23 those employees.

24 Sec. 23. 36 MRSa §1752, sub-§13-A is enacted to
25 read:

26 13-A. Sale at retail. "Sale at retail" means re-
27 tail sale.

28 Sec. 24. 36 MRSa §1752, sub-§14, as amended by
29 PL 1983, c. 828, §4, is repealed and the following
30 enacted in its place:

31 14. Sale price. "Sale price" means the total
32 amount of a retail sale valued in money, whether re-
33 ceived in money or otherwise.

34 A. "Sale price" includes:

35 (1) Services which are a part of a retail
36 sale; and

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1 (2) All receipts, cash, credits and proper-
2 ty of any kind or nature and any amount for
3 which credit is allowed by the seller to the
4 purchaser, without any deduction on account
5 of the cost of the property sold, the cost
6 of the materials used, labor or service
7 cost, interest paid, losses or any other ex-
8 penditures.

9 B. "Sale price" does not include:

10 (1) Discounts allowed and taken on sales;

11 (2) Allowances in cash or by credit made
12 upon the return of merchandise or with re-
13 spect to fabrication services pursuant to
14 warranty;

15 (3) The price of property returned or fab-
16 rication services rejected by customers,
17 when the full price is refunded either in
18 cash or by credit;

19 (4) The price received for labor or ser-
20 vices used in installing or applying or re-
21 pairing the property sold or fabricated, if
22 separately charged or stated;

23 (5) Any amount charged or collected, in
24 lieu of a gratuity or tip, as a specifically
25 stated service charge, when that amount is
26 to be disbursed by a hotel, motel, restau-
27 rant or other eating establishment to its
28 employees as wages;

29 (6) The amount of any tax imposed by the
30 United States upon or with respect to retail
31 sales, whether imposed upon the retailer or
32 the consumer, except any manufacturers', im-
33 porters', alcohol or tobacco excise tax; or

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1 (7) The cost of transportation from the
2 retailer's place of business or other point
3 from which shipment is made directly to the
4 purchaser, provided that those charges are
5 separately stated and the transportation oc-
6 currs by means of common carrier, contract
7 carrier or the United States mail.

8 Sec. 25. 36 MRSa §1752, sub-§17-A is enacted to
9 read:

10 17-A. Taxable service. "Taxable service" means:

11 A. Rental of living quarters in any hotel, room-
12 ing house, tourist or trailer camp;

13 B. Rental, for a period of less than one year,
14 of an automobile;

15 C. Telephone or telegraph service;

16 D. Extended cable television service;

17 E. Fabrication services; and

18 F. Custom computer programming, including, but
19 not limited to, modification of a standard pro-
20 gram.

21 Sec. 26. 36 MRSa §1753 is repealed and the fol-
22 lowing enacted in its place:

23 §1753. Tax is a levy on consumer

24 The liability for, or the incidence of, the tax
25 imposed by this Part is declared to be a levy on the
26 consumer. The retailer shall add the amount of the
27 tax to the sale price and may state the amount of the
28 tax separately from the sale price of tangible per-
29 sonal property or taxable services on price display
30 signs, sales or delivery slips, bills and statements
31 which advertise or indicate the sale price of that

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1 property or those services.

2 Sec. 27. 36 MRSA §1754, sub-§1 is amended to
3 read:

4 1. Maintains place of business. Every seller of
5 tangible personal property or taxable services,
6 whether or not at retail, maintaining who maintains
7 within this State any office, place of manufacture,
8 place of distribution, sales or sample room or place,
9 warehouse or storage place or other place of busi-
10 ness.

11 Sec. 28. 36 MRSA §1754, sub-§2 is amended to
12 read:

13 2. Makes sales or solicits orders. Every seller
14 of tangible personal property or taxable services who
15 does not maintaining maintain such a place who but
16 makes retail sales within this State or who solicits
17 orders by means of salesmen within the State for re-
18 tail sales for use, storage or other consumption
19 within the State.

20 Sec. 29. 36 MRSA §1754, sub-§3 if amended to
21 read:

22 3. Consignee or agent. Every consignee or agent
23 who makes retail sales in the State of tangible per-
24 sonal property or taxable services on behalf of a
25 principal who is without the State if the principal
26 is not the holder of a valid registration certifi-
27 cate.

28 Sec. 30. 36 MRSA §1754, sub-§4 is amended to
29 read:

30 4. Sales for use within State. Every agent, rep-
31 resentative, salesman, entrepreneur, solicitor, dis-
32 tributor or independent selling agent, when such per-
33 son receives compensation by reason of sales of tan-
34 gible personal property or taxable services made out-

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1 side the State by his principal for use, storage or
2 other consumption in the State, and every salesman
3 within the State of any seller subject to subsection
4 2, if said principal is not the holder of a valid
5 registration certificate.

6 Sec. 31. 36 MRSA §1754, sub-§6, as enacted by PL
7 1965, c. 362, §5, is repealed.

8 Sec. 32. 36 MRSA §1754, sub-§7, as enacted by PL
9 1977, c. 198, §5, is repealed.

10 Sec. 33. 36 MRSA §1754, sub-§8, as enacted by PL
11 1979, c. 268, is repealed and the following enacted
12 in its place:

13 8. Other presence in State. Every seller of tan-
14 gible personal property or fabrication services who
15 maintains a continuing presence of a nonsoliciting
16 employee within the State or who makes regular or
17 frequent delivery in this State, by means of its own
18 employees or agents, of that property or of tangible
19 personal property on which fabrication services have
20 been performed.

21 Sec. 34. 36 MRSA §1754, sub-§9, as enacted by PL
22 1983, c. 859, Pt. M, §§3 and 13, is repealed.

23 Sec. 35. 36 MRSA §1756, as amended by PL 1971,
24 c. 20, is further amended to read:

25 §1756. Voluntary registration

26 Every seller of tangible personal property or
27 taxable services, not required by section 1754 to
28 register, may register upon such terms as the State
29 Tax Assessor may prescribe. Upon registration, he
30 shall have the rights and duties of a person required
31 to be registered and shall be subject to the same
32 penalties, except that his liability may be limited
33 to tax actually collected. The person so registered
34 may at any time surrender his registration certifi-

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1 cate and request that the same be canceled. Upon re-
2 ceipt of such certificate and request, the State Tax
3 Assessor shall grant the same, if it appears to the
4 State Tax Assessor that the registrant has satisfied
5 all liability to the State and that he is not re-
6 quired by law to register. Upon surrender of his
7 certificate, the registered person shall cease to
8 collect sales or use taxes upon sales taking place on
9 and after the date of such surrender.

10 **Sec. 36. 36 MRSA §1760, sub-§25, as amended by**
11 **PL 1985, c. 691, §13, is further amended to read:**

12 25. Boats sold to nonresidents. Sales in this
13 State to nonresidents of yachts and other pleasure
14 boats and commercial vessels and boats actually reg-
15 istered for numbering, enrolled or documented under
16 federal or foreign law in the appropriate
17 customhouses or registry offices for location thereof
18 or home ports therefor outside the State, when such
19 craft are either delivered outside the State or de-
20 livered in the State to be sailed or transported out-
21 side the State immediately upon delivery by the sell-
22 er; and any sales to nonresidents, under contracts
23 for the construction of any such craft to be so de-
24 livered, of materials to be incorporated therein; and
25 any sales to nonresidents for the repair, alteration,
26 refitting, reconstruction, overhaul or restoration of
27 any such craft to be so delivered, of materials to be
28 incorporated therein. If a craft ~~so-registered~~ is
29 present in the State for more than 30 days during the
30 12-month period following its date of purchase or is
31 registered for-a-location in Maine or documented with
32 a home port in the-State Maine, within 12 months of
33 the date of purchase, the ~~person-seeking-registration~~
34 purchaser shall be liable for the use tax on the ba-
35 sis of the original purchase price.

36 **Sec. 37. 36 MRSA §1760, sub-§40, as reallocated**
37 **by PL 1979, c. 663, §221, is repealed and the follow-**
38 **ing enacted in its place:**

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1 40. Mobile and modular homes. Sales of mobile or
2 modular homes includes:

3 A. Used mobile and modular homes; and

4 B. New mobile and modular homes. Exemption is
5 limited to all costs, other than materials, in-
6 cluded in the sale price, but not to exceed 50%
7 of the sale price.

8 **Sec. 38. 36 MRSA §1760, sub-§41, as amended by**
9 **PL 1981, c. 705, Pt. K, is further amended to read:**

10 41. Certain instrumentalities of interstate or
11 foreign commerce. The sale of a vehicle, railroad
12 rolling stock, aircraft or watercraft which is placed
13 in use by the purchaser as an instrumentality of in-
14 terstate or foreign commerce within 30 days after
15 that sale and which is used by the purchaser not less
16 than 80% of the time for the next 2 years as an in-
17 strumentality of interstate or foreign commerce. The
18 State Tax Assessor may for good cause extend for not
19 more than 30 60 days the time for placing the instru-
20 mentality in use in interstate or foreign commerce.
21 For purposes of this subsection, property is "placed
22 in use as an instrumentality of interstate or foreign
23 commerce" by its carrying of, or providing the motive
24 power for the carrying of, a bona fide payload in in-
25 terstate or foreign commerce, or by being dispatched
26 to a specific location at which it will be loaded
27 upon arrival with, or will be used as motive power
28 for the carrying of, a payload in interstate or for-
29 foreign commerce. For purposes of this subsection, "bona
30 fide payload" means a cargo of persons or property
31 transported by a contract or common carrier for com-
32 ensation which exceeds the direct cost of carrying
33 that cargo or pursuant to a legal obligation to pro-
34 vide service as a public utility or a cargo of prop-
35 erty transported in the reasonable conduct of the
36 purchaser's own nontransportation business in inter-
37 state commerce.

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1 Sec. 39. 36 MRSA §1760, sub-§56 is enacted to
2 read:

3 56. Construction contracts with exempt organiza-
4 tions. Sales of tangible personal property, to a
5 construction contractor, which are to be physically
6 incorporated in, and become a permanent part of, real
7 property for sale to any organization or government
8 agency provided exemption under this section, except
9 as otherwise provided. In order to qualify for this
10 exemption, the contractor must have entered into a
11 construction contract with the exempt organization
12 prior to the purchase of the tangible personal prop-
13 erty.

14 Sec. 40. 36 MRSA §1811, first ¶, as amended by
15 PL 1985, c. 783, §5, is repealed and the following
16 enacted in its place:

17 A tax is imposed at the rate of 5% on the value
18 of all tangible personal property, on telephone and
19 telegraph service, on extended cable television ser-
20 vice, on fabrication services and on custom computer
21 programming sold at retail in this State and at the
22 rate of 7% on the value of all other taxable services
23 sold at retail in this State. Value shall be measured
24 by the sale price, except as otherwise provided.

25 Sec. 41. 36 MRSA §1861, as repealed and replaced
26 by PL 1985, c. 783, §7, is amended to read:

27 §1861. Imposition

28 A tax is imposed, at the respective rate provided
29 in section 1811, on the storage, use or other con-
30 sumption in this State of purchases, tangible person-
31 al property or a service the sale of which, if the
32 sale occurred or it had occurred in this State, will
33 would be subject to tax under section 1764 or 1811. A
34 tax--is--imposed--at--the--rate--provided--in--section--1811
35 on--the--sale--price--on--these--purchases. Every person so
36 storing, using or otherwise consuming is liable for

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1 the tax until he has paid the tax or has taken a re-
2 ceipt from his seller, as duly authorized by the
3 State Tax Assessor, showing that the seller has col-
4 lected the sales or use tax, in which case the seller
5 shall be liable for it. Retailers registered under
6 section 1754 or 1756 shall collect the tax and make
7 remittance to the State Tax Assessor. The amount of
8 the tax payable by the purchaser shall be that provid-
9 ed in the case of sales taxes by section 1812.
10 When tangible personal property purchased for resale
11 is withdrawn from inventory by the retailer for his
12 own use, use tax liability accrues at the date of
13 withdrawal.

14 **Sec. 42. 36 MRSA §1955-A**, as amended by PL 1979,
15 c. 541, Pt. A, §223, is further amended to read:

16 §1955-A. Failure to pay tax on vehicles

17 If, after notice of **deficiency** assessment and de-
18 mand for payment, any amount required to be paid with
19 respect to any vehicle is not paid as demanded within
20 the 12-day period prescribed in section 1959, or such
21 extension thereof as the State Tax Assessor may al-
22 low, the State Tax Assessor may, in addition to pro-
23 ceeding to enforce collection pursuant to chapters
24 211 to 225, immediately notify the Secretary of State
25 who shall proceed in accordance with Title 29, sec-
26 tion 55-B, to mail the required 5-day notice and to
27 suspend any registration certificate and plates is-
28 sued for the vehicle in respect to which the tax re-
29 mains unpaid upon the expiration of the 5-day period
30 provided therein.

31 **Sec. 43. 36 MRSA §2724, sub-§2**, as enacted by PL
32 1985, c. 514, §2, is amended to read:

33 2. Commercial forest land. "Commercial forest
34 land" means land which is classified or which is eli-
35 gible for classification as forest land pursuant to
36 the Maine Tree Growth Tax Law, chapter 105, subchap-
37 ter II-A, except that "commercial forest land" does

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1 not include land described in section 573, subsection
2 3, paragraph B, C or D when all commercial harvesting
3 of forest products is prohibited. In determining
4 whether land not classified under the Maine Tree
5 Growth Tax Law is eligible for classification under
6 that law, all facts and circumstances shall be con-
7 sidered, including whether the landowner is engaged
8 in the forest products business and the land is being
9 used in that business or there is a forest management
10 plan for commercial use of the land or a particular
11 parcel of land has been harvested for commercial pur-
12 poses within the preceding 5 years.

13 Sec. 44. 36 MRSA §3851 is repealed.

14 Sec. 45. 36 MRSA §3852, as amended by PL 1983,
15 c. 480, Pt. A, §58, is repealed.

16 Sec. 46. 36 MRSA §4404, last ¶, as enacted by PL
17 1985, c. 783, §16, is repealed.

18 Sec. 47. 36 MRSA §§4405 to 4409, as enacted by
19 PL 1985, c. 783, §16, are repealed.

20 Sec. 48. 36 MRSA §5124-A, first ¶, as repealed
21 and replaced by PL 1985, c. 535, §15, is amended to
22 read:

23 The For tax years beginning on or after January
24 1, 1985, the standard deduction of a resident indi-
25 vidual or of a resident husband and wife who file a
26 joint return or of a resident married person who
27 files a separate return shall be as follows:

28 Sec. 49. 36 MRSA §5124-A, sub-§3, as repealed
29 and replaced by Pl 1985, c. 535, §15, is amended to
30 read:

31 3. Married person; separate return. A married
32 person filing a separate return, the higher of a low-
33 income allowance of ~~\$17,000~~ \$1,100 or 16% of Maine ad-
34 justed gross income up to a maximum deduction of

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1 \$1,400, except that if either spouse used the low-
2 income allowance, both must use it.

3 **Sec. 50. 36 MRSA §5206-B, sub-§2, as repealed**
4 **and replaced by PL 1985, c. 783, §35, is amended to**
5 **read:**

6 2. Maine assets. "Maine assets" means, for any
7 taxable year, a taxable entity's total end of year
8 assets as required to be reported on United States
9 Internal Revenue Service Form 1120, Schedule L, ex-
10 cept for tangible personal property and real property
11 located outside the State. The term includes, in the
12 case of a unitary business, the tangible personal
13 property and real property located in the State of
14 any member of the affiliated group which is not sub-
15 ject for the taxable year to taxation under Part 8.
16 This property in the possession of a taxable entity
17 at year-end and located in the State is to be re-
18 ported as a Maine asset by the possessor taxable en-
19 tity.

20 **Sec. 51. 36 MRSA §5255-B, as amended by PL 1985,**
21 **c. 535, §28, is further amended to read:**

22 §5255-B. Certain items of income under the United
23 States Internal Revenue Code

24 Any person maintaining an office or transacting
25 business within this State and who is required to de-
26 duct and withhold a tax on items of income under the
27 United States Internal Revenue Code, other than wages
28 subject to withholding as provided in section 5250,
29 shall deduct and withhold from such items to the ex-
30 tent they constitute Maine-net income which is not
31 excluded from taxation under Maine law, a tax equal
32 to 5% thereof, unless withholding pursuant to the
33 United States Internal Revenue Code is based on other
34 than a flat rate amount. In that event, the State's
35 withholding procedure should estimate taxable income
36 using the same approach to exemptions as the United
37 States Internal Revenue Code and the amount of tax to

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1 be withheld should be calculated in accordance with
2 withholding methods prescribed pursuant to section
3 5250.

4 **Sec. 52. Application.** Sections 48 to 51 of this
5 Act is effective for tax years beginning on or after
6 January 1, 1987.'

7 STATEMENT OF FACT

8 This statement of fact has been updated to re-
9 flect changes from the original bill.

10 Section 1 extends the sunset date one year to al-
11 low the trial period originally intended by the Leg-
12 islature. Due to a drafting error, implementation of
13 the use of state employees in lieu of attorneys in
14 certain court proceedings has been delayed a year
15 awaiting legislative resolution. It also corrects an
16 incorrect statutory reference.

17 Section 2 makes the levy procedure enacted last
18 year for collection of taxes retroactive to assess-
19 ments made before 1987 without any time limitation.

20 Section 3 corrects typographical errors.

21 Section 4 corrects a reference to credit for
22 taxes refunded and corrects a reference to the Maine
23 Revised Statutes, Title 36, Parts 3, 5 and 8. It also
24 removes the reference to and definition of purchasers
25 from this provision. The definition is outdated and
26 has no apparent need in this provision.

27 Sections 5 and 6 correct typographical errors.

28 Sections 7, 8 and 9 reconcile conflicts in addi-
29 tion to the disclosure provisions of the Maine Re-
30 vised Statutes, Title 36. Section 9 expands confi-
31 dentiality exceptions to allow limited disclosure

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1 during tax examinations, collection activities, civil
2 or criminal investigations or other activities relat-
3 ing to violations of the Maine Revised Statutes, Ti-
4 tle 36. It also includes a provision to permit the
5 disclosure of anonymous computerized tax data to
6 Maine legislative research agencies.

7 Section 10 deletes the language which requires an
8 equalized state valuation in the year of the regular
9 session. Before we had annual "regular sessions" this
10 resulted in biennial state valuations, however, with
11 annual "regular sessions" this language is redundant.

12 Section 11 clarifies a section of the Maine Tree
13 Growth Tax Law by specifying that sale of a portion
14 of a parcel of classified forest land shall not re-
15 sult in loss of its classification under the law un-
16 less a resulting parcel is less than 10 forest land
17 acres.

18 Section 12 repeals the requirement that the State
19 Tax Assessor annually develop a list of values for
20 watercraft which were formerly taxed as personal
21 property. Since watercraft are now subject to an ex-
22 cise tax and exempt from property tax, this provision
23 is unnecessary.

24 Section 13 repeals a requirement relative to the
25 chief assessor of primary assessing areas to commit
26 taxes by June 30th annually. This requirement does
27 not apply to 487 municipalities which are not primary
28 assessing areas and thus, is inequitable.

29 Section 14 adds a provision to the existing ex-
30 cise tax law. Thus, in cases where the State Tax As-
31 sessor must resolve a dispute between municipalities
32 concerning proper excise tax situs, any municipality
33 which has improperly received excise tax money would
34 be required to pay it over to the appropriate munici-
35 pality with interest and corrects the review refer-
36 ence to the Maine Rules of Civil Procedure, Rule
37 80-C, which is a review of final agency action rather

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1 than Rule 80-B, which is a review of governmental
2 action. The determination provided would, in fact, con-
3 stitute final agency action. Also, this section adds
4 a 3-year limitation for a review by the State Tax As-
5 sessor. The 3-year period is similar to that provided
6 for supplemental personal property taxes.

7 Section 15 replaces current definition of "rental
8 of automobile on a short-term basis," which actually
9 defines a type of vehicle. The durational aspect of
10 the short-term rental tax appears in section 25 of
11 the bill. Section 16 of the bill reallocates an ex-
12 isting provision of law to maintain the alphabetical
13 order of sales and use tax definitions. Section 16 of
14 the bill also establishes a separate definition of
15 the "casual sale" provisions which now appear in the
16 definition of "retail sale" and makes clear that all
17 sales by a civic, religious or fraternal organiza-
18 tion, including those made during the first 8 days,
19 will be taxable retail sales if the organization ex-
20 ceeds the 8-day period during which its sales at
21 fairs, etc., are considered to be nontaxable casual
22 sales.

23 Section 17 of the bill amends the definition of
24 "fabrication services" to conform to the definition
25 of "production," which currently appears in Title 36,
26 section 1752, subsection 9, paragraph B and to remove
27 custom computer programming, which is defined sepa-
28 rately by section 25 of the bill, as a taxable ser-
29 vice.

30 Section 18 of the bill clarifies the definition
31 of "primarily" by removing language which appears
32 elsewhere in the production machinery exemption re-
33 quirements.

34 Section 19 of the bill clarifies the definition
35 of "production" by removing unnecessary language.

36 Section 20 of the bill repeals the definition of
37 "rental of automobile on a short-term basis," which

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1 is replaced by sections 15, 16, 17 and 25 of the
2 bill.

3 Section 21 of the bill eliminates specific tax-
4 able services, which are included within the defini-
5 tion of "retail sales," from the definition of "re-
6 tailer."

7 Section 22 of the bill amends the definition of
8 "retail sale" to remove references to "sale at re-
9 tail" added as a definitional cross reference by sec-
10 tion 23 of the bill, to replace individual taxable
11 services with a general reference to "taxable ser-
12 vices," defined by section 25 of the bill, to remove
13 details of the definition of "casual sale," defined
14 by section 15 of the bill, and to exclude certain
15 meals and lodging currently located in the definition
16 of "sale price."

17 Section 23 of the bill establishes "sale at re-
18 tail" as a separate definition.

19 Section 24 of the bill conforms the current defi-
20 nition of "sale price" to fabrication services tax
21 and reorganizes the definition for easier reference.

22 Section 25 of the bill establishes a definition
23 of "taxable service" as a general reference to vari-
24 ous individual taxable services which currently are
25 taxable and to clarify legislative intent that all
26 custom computer programming services, whether per-
27 formed on tangible personal property owned by the
28 customer or by the vendor of the service, is taxable.

29 Section 26 of the bill conforms Title 36, section
30 1753 to the taxation of services.

31 Sections 27 to 30 of the bill establish registra-
32 tion requirements for providers of taxable services.

33 Sections 31, 32 and 34 of the bill eliminate pro-
34 visions which are made superfluous by the introduc-

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1 tion of taxable services into Title 36, section 1754
2 provisions.

3 Section 33 establishes a registration requirement
4 for certain providers of fabrication services.

5 Section 35 of the bill conforms Title 36, section
6 1756 to the taxation of services.

7 Section 36 clarifies the circumstances under
8 which a nonresident purchaser of a watercraft can
9 subsequently become liable for the Maine use tax.

10 Section 37 clarifies the sales tax exemption ap-
11 plying to mobile and modular homes.

12 Section 38 allows the State Tax Assessor a bit
13 more discretion in terms of the period of time al-
14 lowed before a vehicle is to be placed in use in in-
15 terstate commerce without being disqualified for the
16 sales tax exemption.

17 Section 39 enacts a provision to recognize his-
18 torical administrative interpretation of the Sales
19 Tax Law. The Bureau of Taxation has historically
20 considered, as exempt, sales of tangible personal
21 property, to a construction contractor, which are to
22 be physically incorporated in and become a permanent
23 part of real property for sale to government agencies
24 and other exempt organizations that are provided ex-
25 emption under the Maine Revised Statutes, Title 36,
26 section 1760. It has been suggested by the Attorney
27 General's Office that there may not be any statutory
28 support for this administrative practice. Unless
29 this exemption is enacted, the Bureau of Taxation may
30 be forced to begin applying sales and use tax to
31 these sales. A change of the bureau's past practice
32 would generate considerable negative reaction, not
33 only from contractors and exempt organizations but
34 also from state and municipal governments. Enactment
35 of this bill will support administrative practice
36 since the sales tax was enacted in 1951.

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1 Section 40 of the bill amends Title 36, section
2 1811 to conform to the definition of "taxable ser-
3 vice" by section 25 of the bill and to remove unnec-
4 essary language, Title 36, sections 189 and 1952.

5 Section 41 of the bill clarifies Title 36, sec-
6 tion 1861.

7 Section 42 removes the word "deficiency" from a
8 provision of sales tax law. The concept of deficiency
9 assessment was replaced some time ago with the term
10 "assessment." This was inadvertently overlooked at
11 that time.

12 Section 43 clarifies the definition of "commer-
13 cial forest land" within the Commercial Forestry Ex-
14 cise Tax Law. All land classified under the Maine
15 Tree Growth Tax Law would be included as commercial
16 forest land unless commercial harvesting of forest
17 products is prohibited.

18 Sections 44 and 45 remove reporting requirements
19 for inheritance tax purposes by banks and registers
20 of probate. With the repeal of the inheritance tax
21 for deaths occurring on or after July 1, 1986, these
22 reports are no longer necessary.

23 Sections 46 and 47 repeal several administrative
24 provisions of the tobacco products tax which are in
25 conflict with uniform administrative provisions con-
26 tained in Title 36.

27 Sections 48 and 49 clarify income tax law with
28 regard to the effective date of standard deduction
29 provisions. These sections also correct an error in
30 the amount of the standard deduction for a married
31 person filing a separate return. The low-income al-
32 lowance should read \$1,100, rather than \$1,000.

33 Section 50 amends the definition of "Maine as-
34 sets" within the franchise tax law. It provides that

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1 real property located outside the State be excluded
2 from Maine assets just like tangible personal proper-
3 ty. It also provides that property of an affiliated
4 group member in the possession of another group mem-
5 ber and located in the State will not escape taxa-
6 tion.

7 Section 51 clarifies a provision of the income
8 tax withholding law. The term "Maine net income"
9 which has no definition for individuals is replaced
10 with the term "income which is not excluded from tax-
11 ation under Maine law."

12 3425061187

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