

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2318

H.P. 1689 House of Representatives, February 22, 1988
Reported by Representative MAYO for the Maine Commission
on Land Conservation and Economic Development pursuant to
Public Law 1987, Chapter 514, Section 3.

Reference to the Joint Standing Committee on Taxation
suggested and printing ordered under Joint Rule 18.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

1 AN ACT to Impose a Tax on Capital Gains from
2 Speculative Land Sales.
3

4 Be it enacted by the People of the State of Maine as
5 follows:

6 36 MRSA c. 716 is enacted to read:

7 CHAPTER 716

1 TAX ON GAINS FROM CERTAIN SALES OR
2 EXCHANGES OF LAND

3 §4761. Legislative findings and purposes

4 The Legislature finds that Maine is experiencing
5 rapidly accelerating and uncontrolled numbers of land
6 transactions made for speculative purposes and that
7 land speculation: Is detrimental to the economy of the
8 State and produces no economic benefit to the people
9 of Maine; destabilizes the marketplace for real
10 property in the State, artificially inflates prices
11 for such property and threatens the availability of
12 affordable housing; undermines community values and
13 rural character; creates a severe burden on the local
14 real property tax system and the ability of Maine
15 citizens to pay property taxes; and imposes a
16 long-term threat to the natural resource land base
17 upon which Maine's forestry, agricultural and
18 recreational industries, as well as the State's
19 quality of life, depend. It is the purpose of the
20 Legislature, therefore, to impose a reasonable but
21 progressive tax on capital gains from speculative
22 transactions in land in order to offset the adverse
23 consequences of land speculation, to restore stability
24 to the real estate marketplace, and to raise public
25 revenues to be distributed to local governments and
26 used for land use planning, growth management and
27 other programs designed to alleviate the adverse
28 effects of land speculation.

29 §4762. Definitions

30 As used in this chapter, unless the context
31 otherwise indicates, the following terms have the
32 following meanings.

33 1. Basis. "Basis" means the tax basis for land
34 as determined under the Code, except as otherwise
35 provided in this chapter. Land on which there are
36 improvements shall have a basis which is computed on

1 the cost of the land, excluding the cost or fair
2 market value of the improvements at the time acquired.

3 2. Buyer. "Buyer" means a person buying or
4 otherwise acting as the transferee of any land. When
5 there is more than one person involved as a buyer in a
6 transaction, each person shall be deemed the buyer,
7 both jointly and severally.

8 3. Consideration. "Consideration" means the full
9 actual sales price, together with all other valuable
10 consideration, computed in dollar value, whether paid
11 or to be paid, including the dollar amount of any
12 liens or encumbrances on the land as it will be
13 conveyed to the buyer. When land to be sold or
14 exchanged is improved, the total consideration paid or
15 agreed to be paid by the buyer shall be allocated
16 between the value of the improvements and the value of
17 the land, according to their respective fair market
18 values on the date of the sale or exchange.

19 4. Gain. "Gain" means the full consideration
20 received, to be received or otherwise realized by the
21 seller from a sale or exchange of taxable land, less
22 the seller's basis in the land, and further reduced by
23 the seller's reasonable, out-of-pocket commissions and
24 expenses of sale. If the seller has owned the land
25 for less than one year, the aggregate amount of
26 commissions and expenses of sale which may be deducted
27 in computing gain shall not exceed 12% of the
28 consideration. If a sale or exchange includes both
29 taxable land and improvements on that land, selling
30 expenses and gain shall be allocated between the land
31 and improvements on the basis of their respective fair
32 market values. The gain from any sale or exchange
33 shall not be reduced by any losses incurred in other
34 transactions.

35 5. Holding period. "Holding period" means the
36 period of time during which the seller held title to
37 the land or, in the context of a sale or exchange

1 when the seller does not have title, a beneficial
2 ownership interest in land held by the seller. Unless
3 the context otherwise requires in this chapter,
4 "holding period" shall be determined in accordance
5 with the provisions of the Code.

6 6. Installment sale. "Installment sale" means a
7 sale or exchange of land, the payments for which are
8 made in installments on dates other than the date of
9 closing and passing of title.

10 7. Person. "Person" means an individual, firm,
11 corporation, partnership, trust, association or other
12 legal entity.

13 8. Principal residence. "Principal residence"
14 means the principal dwelling of a person whose
15 domicile is in the State. A principal residence may
16 include a dwelling where the resident lives and also
17 carries out a home occupation or similar commercial
18 activity which is secondary to use as a principal
19 residence.

20 9. Sale or exchange. "Sale or exchange" means
21 any transfer of ownership, ownership interest or
22 equivalent rights in taxable land for consideration.
23 Without limitation, a sale or exchange occurs when
24 title passes to the buyer or upon entry into an
25 installment sale contract, an option agreement or any
26 other contract or agreement, the substance of which is
27 to pass to the buyer an interest in taxable land,
28 provided that some consideration has passed to the
29 seller. A mere promise to purchase and sell,
30 accompanied by amounts paid by the buyer as earnest
31 money or on deposit, but to which the seller has no
32 immediate right, does not constitute a sale or
33 exchange. A sale or exchange does not include any of
34 the following: a bona fide gift; a transfer by reason
35 of death or distribution by an estate in accordance
36 with a probated will, intestate succession or
37 operation of law; a transfer to a spouse under a
38 decree of divorce; a transfer pursuant to a partition

1 among cotenants of land previously held in common by
2 them; a corrective deed; or any other transfer for
3 which no consideration is due or received. A lease
4 shall be deemed a sale or exchange when its term is 99
5 years or longer or is perpetual, or the lease is
6 otherwise substantially the equivalent of a sale or
7 exchange. A sale of mineral rights or timber rights
8 for a limited duration of time is not a sale or
9 exchange of land. A sale or exchange of shares in a
10 corporation, or of comparable interests in any other
11 form of organization or legal entity, which
12 effectively entitles the purchaser of such shares or
13 interests to the personal use or occupancy of taxable
14 land, constitutes a sale or exchange of taxable land.

15 10. Seller. "Seller" means a person selling,
16 conveying or otherwise acting as the transferor of any
17 land. When there is more than one person involved as
18 a seller in a transaction, each person shall be deemed
19 the seller, both jointly and severally.

20 11. Taxable land. "Taxable land" means all land,
21 whether or not improved, except as exempted under this
22 subsection. "Taxable land" does not include:

23 A. Buildings, structures or other improvements
24 constructed or installed upon land, but does
25 include land which underlies those improvements
26 except as exempted under this subsection;

27 B. Land, not exceeding 10 acres in area,
28 underlying a building occupied as the principal
29 residence of the seller or to be occupied within 6
30 months and continuing for at least one year
31 following the date of purchase as the principal
32 residence of the buyer. If zoning or other land
33 use laws require a minimum of more than 10 acres
34 for residential use, the minimum number of acres
35 required shall be excluded from the definition of
36 "taxable land" under this paragraph, except that
37 not more than 25 acres shall be excluded for this
38 reason;

1 C. Any land, not exceeding 10 acres in area
2 except as enlarged as provided by paragraph B,
3 which is purchased for purposes of constructing on
4 that land any building which will be occupied as a
5 principal residence; provided that such a
6 principal residence must be occupied for that
7 purpose within 3 years of the date of the purchase
8 and must continue to be so occupied for at least
9 one year;

10 D. Any land sold by an agency or instrumentality
11 of the State, or of a municipality or county or of
12 the United States, or by a nonprofit development
13 corporation or nonprofit organization qualifying
14 under the Code, Section 501(c)(3), provided that
15 the income from the sale is exempt from taxation
16 under the Code;

17 E. Land sold to an agency or instrumentality of
18 the State, or of a municipality or county or of
19 the United States, or to a nonprofit organization
20 qualifying under the Code, Section 501(c)(3),
21 provided that the property shall be used by the
22 buyer or the buyer's designee for at least a
23 period of 10 years for purposes of preserving
24 lands for agriculture, forestry, open space or
25 public outdoor recreation; or

26 F. Agricultural land sold or transferred by a
27 farmer to a member of the family, provided that
28 the land shall be used by the transferee as
29 agricultural land for a period of time which, when
30 added to the time the land was used for
31 agricultural purposes by the transferor, equals or
32 exceeds 5 years. For purposes of this paragraph,
33 "family" means persons in a relationship to the
34 transferor of grandparent, parent, step-parent,
35 brother, sister or natural or adopted child.

36 §4763. Tax imposed

1 §4764. Liability for tax

2 1. General rule; liability of seller. Except as
3 otherwise provided in this chapter, the person liable
4 for the tax is the seller in any sale or exchange.

5 2. Exception; liability of buyer. Whenever this
6 chapter provides that a transfer of land is free from
7 the imposition of tax because of the claimed status of
8 the buyer or the intended use of the land in the hands
9 of the buyer and that status subsequently proves to be
10 incorrect or that intended use fails to occur, the tax
11 otherwise due from the seller shall become the
12 liability of and shall be paid by the buyer. If the
13 transfer of land initially determined to be tax-free
14 subsequently becomes taxable, a lien in the amount of
15 the tax which should have been paid is automatically
16 imposed on the land, with the lien having priority
17 over all subsequent liens and attachments on the date
18 of the sale or exchange. The provisions of this
19 subsection do not apply to a buyer which is an agency
20 or instrumentality of government.

21 §4765. Filings and payment

22 1. Withholding by buyer. The buyer of any
23 taxable land which was held by the seller for less
24 than 5 years shall withhold 10% of all consideration
25 paid or to be paid to the seller. Any amount so
26 withheld shall be remitted to the State Tax Assessor
27 at the time of sale or exchange, together with such
28 form, signed by the seller and the buyer, as
29 prescribed by the State Tax Assessor.

30 2. Return by seller. Within 30 days of the sale
31 or exchange of taxable land, the seller shall file a
32 return with the State Tax Assessor, in a form
33 prescribed by the State Tax Assessor, setting forth
34 the calculation of the amount of gain and tax due on
35 the sale or exchange and the amount withheld by the

1 buyer and previously remitted to the State Tax
2 Assessor. The seller shall either remit, with the
3 return, the balance of the tax due or make a claim for
4 refund, as appropriate. For good cause shown and upon
5 conditions set by the State Tax Assessor, the assessor
6 may extend the time for filing the return and paying
7 the tax.

8 3. Declarations. In any case where a sale,
9 exchange or other transfer of land is free from the
10 imposition of a tax under this chapter, the seller and
11 the buyer shall file a declaration to that effect with
12 the State Tax Assessor, on a form prescribed by the
13 State Tax Assessor, in order to show why the sale or
14 exchange is free of tax and to establish the amount of
15 tax liability in the event that the transfer is
16 subsequently found to be taxable. If any matter
17 reported on any such declaration proves to be false or
18 misleading, or any intended use of land so reported
19 fails to occur, any person who made the declaration
20 shall promptly file an amended declaration with the
21 State Tax Assessor. The requirement of filing a
22 declaration may be waived under rules adopted by the
23 State Tax Assessor as to transactions when the State
24 Tax Assessor determines that no significant purpose
25 will be served by the filing of a declaration.

26 §4765. Administration of tax

27 1. Enforcement under income tax laws. All laws,
28 enforcement procedures, penalties and remedies
29 provided under this Title for the collection and
30 enforcement of Part 8 apply to the tax imposed by this
31 chapter.

32 2. Public disclosure. Notwithstanding section
33 191, all declarations, returns and other filings
34 received by the State Tax Assessor under this chapter
35 shall be subject to the Maine freedom of access law,
36 Title 1, chapter 13, subchapter I.

1 The revenues raised by this tax will be
2 distributed to municipalities in order to help them
3 undertake growth management programs, designed to
4 alleviate problems caused by land speculation and
5 development pressures.

6 This tax structure is based upon that which has
7 been working in the State of Vermont for more than a
8 decade.

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