

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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Legislative Document

No. 249

H.P. 184

House of Representatives, February 16, 1989

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative O'DEA of Orono.

Cosponsored by Representative MAYO of Thomaston, Senator PEARSON of Penobscot and Senator ANDREWS of Cumberland.

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STATE OF MAINE

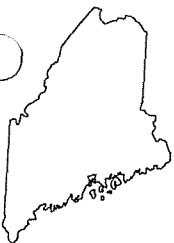
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-NINE

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An Act to Impose a Tax on Capital Gains from Speculative Land Sales.

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1 **Be it enacted by the People of the State of Maine as follows:**

3 **Sec. 1. 36 MRSA §191, sub-§2, ¶N,** as amended by PL 1987, c.  
5 769, Pt. A, §148, is further amended to read:

7 N. The disclosure by the State Tax Assessor of computerized  
9 individual income tax data, without identification by  
11 taxpayer name, number or address, to a research agency of  
13 the Legislature; and

15 **Sec. 2. 36 MRSA §191, sub-§2, ¶O,** as enacted by PL 1987, c.  
17 769, Pt. A, §149, is amended to read:

19 O. The disclosure to an authorized representative of the  
21 Department of Human Services of the most recent address of a  
23 delinquent payor of child support when a written request  
25 containing the payor's Social Security number is made by the  
27 department; and

29 **Sec. 3. 36 MRSA §191, sub-§2, ¶P** is enacted to read:

31 P. The disclosure to the public of all declarations,  
33 returns and other findings received by the State Tax  
35 Assessor pursuant to chapter 716.

37 **Sec. 4. 36 MRSA c. 716** is enacted to read:

39 CHAPTER 716

41 TAX ON GAINS FROM CERTAIN SALES OR  
43 EXCHANGES OF LAND

45 §4761. Scope of chapter

47 This chapter imposes a tax on capital gains from speculative  
49 transactions in land in order to offset the adverse consequences  
51 of land speculation, restore stability to the real estate  
marketplace and raise public revenues to provide affordable  
housing to the people of Maine.

§4762. Definitions

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

1. Basis. "Basis" means the tax basis for land as  
determined under the Code, except as otherwise provided in this  
chapter. Land on which there are improvements shall have a basis  
which is computed on the cost of the land, excluding the cost or  
fair market value of the improvements at the time acquired.

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

5  
6            3. Commercial activity. "Commercial activity" means  
7            buildings, structures and other improvements constructed for the  
8            sole purpose of carrying on a business activity on an ongoing  
9            basis, when those improvements comprise at least 25% of the fair  
10           market value of the property.

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

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

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36           6. Holding period. "Holding period" means the period of  
37           time during which the seller held title to the land or, in the  
38           context of a sale or exchange when the seller does not have  
39           title, a beneficial ownership interest in land held by the  
40           seller. Unless the context otherwise requires in this chapter,  
41           "holding period" shall be determined in accordance with the  
42           provisions of the Code.

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44           7. Industrial facility. "Industrial facility" means  
45           buildings, structures and other improvements constructed for the  
46           sole purpose of carrying on the commercial production of goods or  
47           services on an ongoing basis, when those improvements comprise at  
48           least 25% of the fair market value of the property.

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

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2       9. Person. "Person" means an individual, firm,  
3 corporation, partnership, trust, association or other legal  
4 entity.

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6       10. Principal residence. "Principal residence" means the  
7 principal dwelling of a person whose domicile is in this State.  
8 A principal residence may include a dwelling where the resident  
9 lives and also carries out a home occupation or similar  
10 commercial activity which is secondary to use as a principal  
11 residence.

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13       11. Sale or exchange. "Sale or exchange" means any  
14 transfer of ownership, ownership interest or equivalent rights  
15 in taxable land for consideration. Without limitation, a sale or  
16 exchange occurs when title passes to the buyer or upon entry into  
17 an installment sale contract, an option agreement or any other  
18 contract or agreement, the substance of which is to pass to the  
19 buyer an interest in taxable land, provided that some  
20 consideration has passed to the seller. A mere promise to  
21 purchase and sell, accompanied by amounts paid by the buyer as  
22 earnest money or on deposit, but to which the seller has no  
23 immediate right, does not constitute a sale or exchange. A sale  
24 or exchange does not include any of the following: a bona fide  
25 gift; a transfer by reason of death or distribution by an estate  
26 in accordance with a probated will, intestate succession or  
27 operation of law; a transfer to a spouse under a decree of  
28 divorce; a transfer pursuant to a partition among cotenants of  
29 land previously held in common by them; a corrective deed; or any  
30 other transfer for which no consideration is due or received. A  
31 lease shall be deemed a sale or exchange when its term is 99  
32 years or longer or is perpetual, or the lease is otherwise  
33 substantially the equivalent of a sale or exchange. A sale of  
34 mineral rights or timber rights for a limited duration of time is  
35 not a sale or exchange of land. A sale or exchange of shares in  
36 a corporation, or of comparable interests in any other form of  
37 organization or legal entity, which effectively entitles the  
38 purchaser of such shares or interests to the personal use or  
39 occupancy of taxable land, constitutes a sale or exchange of  
40 taxable land.

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42       12. Seller. "Seller" means a person selling, conveying or  
43 otherwise acting as the transferor of any land. When there is  
44 more than one person involved as a seller in a transaction, each  
45 person shall be deemed the seller, both jointly and severally.

46  
47       13. Taxable land. "Taxable land" means all land whether or  
48 not improved, held by the seller for less than three years,  
49 except as exempted under this subsection. "Taxable land" does  
50 not include:

- 1           A. Buildings, structures or other improvements constructed  
3           or installed upon land, but does include land which  
              underlies those improvements except as exempted under this  
5           subsection;
- 7           B. Land when buildings situated on the land and structural  
              improvements made to the land comprise at least 25% of the  
9           fair market value of the property at the time of the sale or  
              exchange. Construction of roadways shall not constitute a  
11           structural improvement;
- 13           C. Land, not exceeding 10 acres in area, which is purchased  
              for purposes of constructing on that land any building that  
15           will be occupied as a principal residence; provided that the  
              principal residence is occupied for that purpose within 3  
17           years of the date of purchase and must continue to be so  
              occupied for at least one year;
- 19           D. Land which is purchased to develop on that land a  
              commercial or industrial facility which will be used as a  
21           commercial or industrial facility within 5 years of the date  
              of the purchase and must continue to be so occupied for at  
23           least one year;
- 25           E. Any land sold by an agency or instrumentality of the  
              State, or of a municipality or county or of the United  
27           States, or by a nonprofit development corporation or  
              nonprofit organization qualifying under the Code, Section  
29           501(c)(3), provided that the income from the sale is exempt  
              from taxation under the Code;
- 31           F. Land sold to an agency or instrumentality of the State,  
              or of a municipality or county or of the United States, or  
33           to a nonprofit organization qualifying under the Code,  
              Section 501(c)(3), provided that the property shall be used  
35           by the buyer or the buyer's designee for at least a period  
37           of 10 years for purposes of preserving lands for  
              agriculture, forestry, open space or public outdoor  
39           recreation; or
- 41           G. Agricultural land sold or transferred by a farmer to a  
              member of the family, provided that the land shall be used  
43           by the transferee as agricultural land for a period of time  
              which, when added to the time the land was used for  
45           agricultural purposes by the transferor, equals or exceeds 3  
              years. For purposes of this paragraph, "family" means  
47           persons in a relationship to the transferor of grandparent,  
              parent, step-parent, brother, sister or natural or adopted  
49           child.

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**§4763. Tax imposed**

1. Tax rate schedule. There is imposed a tax on the gain from the sale or exchange of taxable land in this State. A single flat rate of tax shall apply to all of the gain realized or to be realized, and shall be determined by the percentage which the entire gain is of the basis, in accordance with the following schedule.

TAX RATE SCHEDULE

<u>Holding period of seller</u>	<u>Gain, as a percentage of basis</u>		
	<u>0% to 99%</u>	<u>100% to 199%</u>	<u>200% or more</u>
<u>Less than one year</u>	<u>30%</u>	<u>40%</u>	<u>50%</u>
<u>1 year or more, but less than 2 years</u>	<u>20%</u>	<u>30%</u>	<u>40%</u>
<u>2 years or more, but less than 3 years</u>	<u>10%</u>	<u>20%</u>	<u>30%</u>
<u>Greater than 3 years</u>	<u>No tax</u>		

2. Application to certain transactions. When a sale or exchange of taxable land occurs, the entire tax due on the sale becomes due and payable as provided under this chapter, regardless of whether or not the transaction between the seller and buyer is an installment sale, or a sale or exchange which is not recognized under the Code, unless that transaction is also exempt from tax under this chapter.

**§4764. Liability for tax**

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

2. Exception; liability of buyer. Whenever this chapter provides that a transfer of land is free from the imposition of tax because of the claimed status of the buyer or the intended use of the land in the hands of the buyer and that status subsequently proves to be incorrect or that intended use fails to occur, the tax otherwise due from the seller shall become the liability of, and shall be paid by, the buyer. If the transfer

1 of land initially determined to be tax-free subsequently becomes  
2 taxable, a lien in the amount of the tax which should have been  
3 paid is automatically imposed on the land, with the lien having  
4 priority over all subsequent liens and attachments on the date of  
5 the sale or exchange. The provisions of this subsection do not  
6 apply to a buyer which is an agency or instrumentality of  
7 government.

9 **§4765. Filings and payment**

11 1. Withholding by buyer. The buyer of any taxable land  
12 which was held by the seller for less than 3 years shall withhold  
13 10% of all consideration paid or to be paid to the seller. Any  
14 amount so withheld shall be remitted to the State Tax Assessor at  
15 the time of sale or exchange, together with such form signed by  
16 the seller and the buyer, as prescribed by the State Tax Assessor.

17 2. Return by seller. Within 30 days of the sale or  
18 exchange of taxable land, the seller shall file a return with the  
19 State Tax Assessor, in a form prescribed by the State Tax  
20 Assessor, setting forth the calculation of the amount of gain and  
21 tax due on the sale or exchange and the amount withheld by the  
22 buyer and previously remitted to the State Tax Assessor. The  
23 seller shall either remit, with the return, the balance of the  
24 tax due or make a claim for refund as appropriate. For good  
25 cause shown and upon conditions set by the State Tax Assessor,  
26 the assessor may extend the time for filing the return and paying  
27 the tax.

29 3. Declarations. Whenever a sale, exchange or other  
30 transfer of land is free from the imposition of a tax under this  
31 chapter, the seller and the buyer shall file a declaration to  
32 that effect with the State Tax Assessor, on a form prescribed by  
33 the State Tax Assessor, in order to show why the sale or exchange  
34 is free of tax and to establish the amount of tax liability in  
35 the event that the transfer is subsequently found to be taxable.  
36 If any matter reported on any such declaration proves to be false  
37 or misleading or any intended use of land so reported fails to  
38 occur, any person who made the declaration shall promptly file an  
39 amended declaration with the State Tax Assessor. The requirement  
40 of filing a declaration may be waived under rules adopted by the  
41 State Tax Assessor as to transactions when the State Tax Assessor  
42 determines that no significant purpose will be served by the  
43 filing of a declaration.

45 **§4766. Administration of tax**

47 1. Enforcement under income tax laws. All laws,  
48 enforcement procedures, penalties and remedies provided under  
49 this Title for the collection and enforcement of Part 8 apply to  
50 the tax imposed by this chapter.





1 periods and at lower gains.

3 This bill differs from previous initiatives in that the type  
5 of land transactions covered by the tax has been greatly narrowed  
7 to only apply to sales which are indisputably speculative in  
9 nature, all land with structures are exempt from the tax as long  
as the structures comprise at least 25% of the value of the  
property and the tax rates for speculative sales have been  
significantly reduced.

11 The revenues from this program are to be deposited in an  
13 affordable housing fund administered by the Maine State Housing  
Authority to help Maine communities address affordable housing  
needs.