

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1408

H.P. 1010

House of Representatives, May 1, 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 HOGLUND of Portland.

Cosponsored by Representative RAND of Portland and Representative NADEAU of Saco.

STATE OF MAINE

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

**An Act to Establish a Local Option Municipal Income Tax Surcharge
on Residents and a Municipal Earnings Tax on Nonresidents.**



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

3 Sec. 1. 36 MRSA c. 843 is enacted to read:

5 CHAPTER 843

7 MUNICIPAL INCOME TAX SURCHARGE

9
11 §5601. Definitions

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

15 1. Municipal resident estate or trust. "Municipal resident estate or trust" means:

17 A. The estate of a decedent who at the time of death was domiciled in that municipality;

21 B. A trust or a portion of the trust created by will of the decedent who at the time of death was domiciled in that municipality; or

25 C. A trust or a portion of a trust created by or consisting of the property of a person domiciled in that municipality.

27
29 2. Municipal resident individual. "Municipal resident individual" means an individual:

31 A. Who is domiciled in a municipality which has imposed a municipal income tax surcharge under the authority of this chapter; or

35 B. Who is not domiciled in a municipality which has imposed a municipal income tax surcharge, but maintains a permanent place of abode in such a municipality and spends in the aggregate more than 183 days of the taxable year in that municipality, unless that individual is in active service in the Armed Forces of the United States.

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43 3. Municipal nonresident estate or trust. "Municipal nonresident estate or trust" means an estate or trust which is not a resident of that municipality.

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47 4. Municipal nonresident individual. "Municipal nonresident individual" means an individual who is not a resident of that municipality.

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51 §5602. Authorization to impose municipal income tax surcharge

1 1. General. Notwithstanding any other provision of law to
2 the contrary, but subject to the limitations and conditions set
3 forth in this chapter, any municipality in this State may adopt
4 and amend local ordinances imposing in that municipality, for
5 taxable years beginning after December 31, 1990, a municipal
6 income tax surcharge on residents of that municipality at a rate
7 not to exceed 15% of the net state tax as defined in section
8 5604. The municipal income tax surcharge shall be administered,
9 collected and distributed by the State Tax Assessor as provided
10 in this chapter.

11 2. Earnings tax on nonresidents requirement. The municipal
12 income tax surcharge authorized by this chapter may be imposed
13 only if the Legislature authorizes the adoption of a municipal
14 tax on the earnings of nonresidents and the municipality imposing
15 the tax authorized by this chapter also includes a tax on the
16 earnings of nonresidents.

17 3. Effective date; filing with State Tax Assessor. No
18 local ordinance adopted under the authority of this chapter may
19 be effective unless the ordinance is enacted at least 90 days
20 prior to the date it is to become effective and unless a
21 certified copy of the local ordinance is mailed by registered
22 mail to the State Tax Assessor by that date.

23 4. Filing of local ordinance with others. Certified copies
24 of the local ordinance shall also be filed with the clerk of the
25 municipality where the tax is imposed, the Secretary of State,
26 and the State Comptroller within 30 days of the date of enactment.

27 §5603. Persons subject to the municipal income tax surcharge

28 1. General. The municipal income tax surcharge imposed
29 under the authority of this chapter shall be imposed for each
30 taxable year on every municipal resident individual, estate and
31 trust, except that residents whose gross income is less than 80%
32 of the median income for that municipality for the preceding tax
33 year, as determined by the State Tax Assessor, shall not be
34 liable for any municipal income tax surcharge. A taxpayer's
35 taxable year for purposes of a municipal income tax surcharge
36 imposed under the authority of this chapter shall be the same as
37 the taxpayer's taxable year for state income tax purposes.

38 2. Partners and partnerships. A partnership shall not be
39 subject to a municipal income tax surcharge imposed by this
40 chapter. Persons carrying on business as partners shall be
41 liable for the municipal income tax surcharge imposed by this
42 chapter only in their separate or individual capacities.

43 3. Associations taxable as corporations. An association,
44 trust or other unincorporated organization, which is taxable as a
45 corporation for federal income tax purposes, shall not be subject
46 to a municipal income tax surcharge imposed by this chapter.

1 to a municipal income tax surcharge imposed under the authority
2 of this chapter.

3
4 4. Exempt trusts and organizations. A trust or other
5 unincorporated organization which by reason of its purposes of
6 activities is exempt from federal income tax shall be exempted
7 from any municipal income tax surcharge imposed under the
8 authority of this chapter, whether or not it is subject to
9 federal income tax on unrelated business taxable income.

11 §5604. Net state tax

13 The net state tax of a municipal resident individual, estate
14 or trust shall be the sum of all the taxes imposed on that
15 individual, estate or trust under this Part for the taxable year,
16 not including the taxes imposed by this chapter less the
17 applicable credits, other than the credit for tax withheld,
18 allowed to such individual, estate or trust under this Part for
19 the taxable year.

21 §5605. Time and place for filing returns and paying tax

23 The municipal income tax surcharge return required by this
24 Part shall be filed on or before the date a federal income tax
25 return is due to be filed, not including any extensions of time
26 claimed or allowed. A taxpayer required to make and file a
27 return under this Part shall, without assessment, notice or
28 demand, pay any tax due thereon to the assessor on or before the
29 date fixed for filing the return. The assessor shall prescribe
30 by regulation the place for filing any return, declaration,
31 statement or other document required by this Part and for the
32 payment of any tax.

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34 §5606. Liabilities of husband and wife

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36 1. Separate returns. If the Maine state personal income
37 tax liabilities of husband and wife are determined on separate
38 returns, their municipal income tax surcharge liabilities in
39 return shall be separate.

41 2. Joint returns. If the Maine state personal income tax
42 liabilities of husband and wife, other than a husband and wife as
43 described in subsection 3, are determined on a joint return, they
44 shall file a joint municipal income tax surcharge return and
45 their municipal income tax surcharge liability shall be joint and
46 several.

47
48 3. Only one spouse resident. If either husband or wife is
49 a municipal resident and the other is a municipal nonresident and
50 their Maine state personal income tax liabilities are determined
51 on a joint return as follows.

1 A. They may elect to file a joint municipal income tax
3 surcharge return as if both were residents, in which case
 their municipal income tax surcharge liability shall be
 joint and several.

5 B. The resident spouse may elect to file a separate
7 municipal income tax surcharge return, in which case the
 income tax surcharge liability shall be determined as if
9 that spouse were filing a separate Maine state personal
 income tax return.

11 §5607. Change of resident status during year

13 1. General. If an individual changes status during the
15 taxable year from municipal resident to municipal nonresident or
 from municipal nonresident to municipal resident, that individual
17 shall file one return as a municipal resident for the portion of
 the year during which the individual is a municipal resident, and
19 a return under a local ordinance authorized by chapter 845 for
 the portion of the year during which the individual is a
21 municipal nonresident, subject to such exceptions as the State
 Tax Assessor may prescribe by rule.

23 2. Trusts. If the status of a trust changes during its
25 taxable year from municipal resident to municipal nonresident, or
 from municipal nonresident to municipal resident, the fiduciary
27 shall file one return as a municipal resident trust for the
 portion of the year during which the trust is a municipal
29 resident trust and a return under a local ordinance authorized by
 chapter 845 for the portion of the year during which the trust is
31 a municipal nonresident trust, subject to such exceptions as the
 State Tax Assessor may prescribe by rule.

33 3. Computation of net state tax. Computation of net state
35 tax shall be as follows.

37 A. When an individual or trust changes resident status
39 during the taxable year, the net state tax for the period of
 residence shall be the net state tax determined as if that
41 individual or trust were a state resident for the entire
 taxable year, multiplied by a fraction: the numerator of
43 which is the individual's or trust's federal adjusted gross
 income for the period of residence, computed as if its
45 taxable year for federal tax purposes were limited to the
 period of residence; and the denominator of which is the
47 individual's or trust's federal adjusted gross income for
 the taxable year.

49 B. For the purposes of paragraph A, the federal adjusted
51 gross income of a trust shall be determined as if the trust
 were an individual.

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§5608. Requirement of withholding tax from wages

1. Manner of withholding. A municipal income tax surcharge imposed under the authority of this chapter shall provide that the tax shall be withheld from the wages of municipal residents in the same manner and subject to the same requirements, to the greatest extent possible, as provided in section 5250.

2. Commencement of withholding. Withholding of tax on wages shall commence not later than the effective date of the local ordinance or 90 days after the date of enactment of the local ordinance, whichever is later.

§5609. Enforcement in conjunction with other taxes

1. Joint action. If the State Tax Assessor takes action with respect to the enforcement and collection of the tax or taxes assessed under other chapters of this Part, the State Tax Assessor shall, whenever possible, accompany that action with a similar action for enforcement and collection of the municipal income tax surcharge.

2. Apportionment of money collected. Any money collected as a result of a joint action shall be deemed to have been collected in proportion to the amounts due, including tax, penalties and interest in addition to tax under other chapters of this Part.

§5610. Administration, collection and review; interpretation

Except as otherwise provided in this chapter, any municipal income tax surcharge imposed under the authority of this chapter shall be administered and collected by the State Tax Assessor in the same manner as the tax imposed by chapters 803 and 809. All of the provisions of this Part relating to or applicable to the administration, collection, liability for and review of the tax imposed by chapters 803 and 809 shall apply to a municipal income tax surcharge imposed under this chapter with the same force and effect as if those provisions had been incorporated in full into this chapter and had expressly referred to the municipal income tax surcharge imposed under this chapter, except when inconsistent with this chapter.

Sec. 2. 36 MRSA c. 845 is enacted to read:

CHAPTER 845

MUNICIPAL EARNINGS TAX ON NONRESIDENTS

§5701. Authorization to impose tax

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1. General. In addition to any other taxes now authorized by law, any municipality may adopt and amend local ordinances imposing a tax on the earnings of nonresidents of that municipality to be administered in the manner provided by the State Tax Assessor.

2. Municipal income tax surcharge required. The tax authorized by this chapter may be imposed only if the municipality imposing this tax also imposes a municipal income tax surcharge on its residents under chapter 843. The rates of such tax shall be the rates contained in the model local ordinance.

3. Model local ordinance. The Bureau of Taxation shall, by February 1, 1990, adopt by rule a model local ordinance for the imposition of an earnings tax on nonresidents, giving due consideration to model ordinances in effect in other states.

4. Effective date; filing with State Tax Assessor. A local ordinance enacted under the authority of this section shall go into effect on the first day of the next succeeding January and shall apply to taxable years beginning on or after that date, provided that no local ordinance may be effective unless the local ordinance is enacted at least 90 days prior to the date it is to become effected unless a certified copy of the ordinance is mailed by registered mail to the State Tax Assessor by that date.

5. Terms. The terms of any local ordinance adopted under this chapter shall be substantially the same as the model ordinance. Substantial compliance shall be determined by the State Tax Assessor.

STATEMENT OF FACT

This bill allows municipalities to adopt an income tax surcharge on residents, in conjunction with an earnings tax surcharge on nonresidents. The State Tax Assessor is directed to develop a model local ordinance for taxation of the earnings on nonresidents. Municipalities who choose to enact an income tax surcharge system will be required to substantially adopt the model ordinance.