

MAINE STATE LEGISLATURE

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R. of S.

L.D. 2228

(Filing No. S-668)

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STATE OF MAINE
SENATE
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A " to S.P. 868, L.D. 2228, Bill, "An Act Concerning Technical Changes to the Tax Laws"

Amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

'Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, certain corrections and additions to the taxation-related laws must be made as soon as possible to avoid unintended problems; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 30-A MRSA §5681, sub-§7 is enacted to read:

7. Indian territory. For purposes of state-municipal revenue sharing, the Passamaquoddy Tribe and the Penobscot Nation Indian Territories shall be treated as if they were municipalities. In the absence of a levy of real and personal property taxes in either or both Indian territories, the property tax assessment is computed by multiplying the state valuation for the Indian territory for the period for which revenue sharing is

being determined by the most current average equalized property tax rate of all municipalities in the State at that time as determined by the State Tax Assessor.

Sec. 2. 36 MRSA §151, as amended by PL 1981, c. 364, §9, is further amended to read:

§151. Review of decisions of State Tax Assessor

Any person who is subject to an assessment by the State Tax Assessor or entitled by law to receive notice of a determination of the State Tax Assessor and who is aggrieved by--that determination as a result of that action may petition request in writing, within ~~15~~ 30 days after receipt of notice of that ~~determination,--for such a decision,~~ reconsideration by the State Tax Assessor of that ~~determination~~ decision.

If a petition request for reconsideration is filed within the specified time period, the State Tax Assessor shall ~~reconsider his-determination~~ the decision. If the ~~petitioner-has so-requested-in-his-petition~~ person requesting reconsideration at the same time also requests, in writing, an informal conference, the State Tax Assessor shall ~~held~~ provide an opportunity for an informal conference with the ~~petitioner~~ person to receive additional information and to hear argument regarding the ~~protested determination--and~~ decision. ~~The State Tax Assessor shall give the petitioner-10-days'~~ person 10 days' notice of the time and place of the conference. The reconsideration, with or without an informal conference, shall ~~is not be deemed to be an~~ "adjudicatory proceeding" within the meaning of that term in the Maine Administrative Procedure Act.

The State Tax Assessor's decision on reconsideration constitutes final agency action which is subject to review by the Superior Court in accordance with the Maine Administrative Procedure Act, except that the absence of a record shall must be resolved exclusively by a hearing de novo on review.

Sec. 3. 36 MRSA §673, sub-§2-A, as amended by PL 1989, c. 753, §4, is further amended to read:

2-A. Amount of exemption. Every person who has the legal title or beneficial title in equity to real property in this State and who resides on that real property, and in good faith makes the same that person's permanent residence or the permanent residence of another or others legally or naturally dependent on that person, is entitled to an exemption from all taxation, except for assessments for special benefits, of 5% of just valuation up to the just valuation of \$50,000 on the residence and contiguous real property. The title may be held jointly or in common with others, and the exemption may be apportioned among the owners who reside on the property, to the extent of their

2 respective interests; but no exemption of more than 5% of the
3 first \$50,000 of just value may be allowed to any one person or
4 on any one dwelling house, except that an exemption up to 5% of
5 the first \$50,000 of just value may be allowed on each apartment
6 occupied by a tenant-stockholder or member of a cooperative
7 apartment corporation and on each condominium parcel occupied by
8 the owner; and the amount of the exemption allowed any person is
9 not to exceed the proportionate just valuation based on the
10 interest owned by that person. This subsection takes effect on
11 April 1, 1991.

12 **Sec. 4. 36 MRSA c. 105, sub-c. V-A**, as enacted by PL 1989, c.
13 411, §§1 and 2, is repealed.

14 **Sec. 5. 36 MRSA §1752, sub-§11**, as amended by PL 1989, c. 501,
15 Pt. V, §§2, 5 and 6; c. 501, Pt. V, §§3 and 6; and c. 533, §§1
16 and 14, is repealed and the following enacted in its place:

17 **11. Retail sale.** "Retail sale" means any sale of tangible
18 personal property in the ordinary course of business for any
19 purpose other than for resale, except resale as a casual sale, in
20 the form of tangible personal property. "Retail sale" also means
21 any sale of a taxable service in the ordinary course of business
22 for any purpose other than for resale, except resale as a casual
23 sale.

24 **A. "Retail sale" includes:**

25 (1) Conditional sales, installment lease sales and any
26 other transfer of tangible personal property when the
27 title is retained as security for the payment of the
28 purchase price and is intended to be transferred later;
29 and

30 (2) Sale of products for internal human consumption to
31 a person for resale through coin-operated vending
32 machines when sold to a retailer whose gross receipts
33 from the retail sale of tangible personal property
34 derived through sales from vending machines are more
35 than 50% of the retailer's gross receipts. The tax
36 must be paid by the retailer to the State.

37 **B. "Retail sale" does not include:**

38 (1) Any casual sale:

39 (2) Any sale by a personal representative in the
40 settlement of an estate, unless the sale is made
41 through a retailer, or unless the sale is made in the
42 continuation or operation of a business;

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2 (3) The sale to a person engaged in the business of
3 renting automobiles; of automobiles, integral parts of
4 automobiles or accessories to automobiles, for rental
5 or for use in an automobile rented, on a short-term
6 basis; or

7 (4) The sale to a person engaged in the business of
8 renting video tapes and video equipment, of video tapes
9 or video equipment for rental.

10 **Sec. 6. 36 MRSA §1752, sub-§14, ¶B,** as repealed and replaced
11 by PL 1987, c. 497, §24, is amended to read:

12 B. "Sale price" does not include:

13 (1) Discounts allowed and taken on sales;

14 (2) Allowances in cash or by credit made upon the
15 return of merchandise or with respect to fabrication
16 services pursuant to warranty;

17 (3) The price of property returned or fabrication
18 services rejected by customers, when the full price is
19 refunded either in cash or by credit;

20 (4) The price received for labor or services used in
21 installing or applying or repairing the property sold
22 or fabricated, if separately charged or stated;

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

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

33 (7) The cost of transportation from the retailer's
34 place of business or other point from which shipment is
35 made directly to the purchaser, provided that those
36 charges are separately stated and the transportation
37 occurs by means of common carrier, contract carrier or
38 the United States mail-;

39 (8) The fee imposed by Title 10, section 1169,
40 subsection 11;

41 (9) The fee imposed by section 4832, subsection 1; or

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(10) The lead-acid battery deposit imposed by Title 38, section 1604, subsection 2-B.

Sec. 7. 36 MRSA §1752, sub-§17 is amended to read:

17. Tangible personal property. "Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but shall does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. "Tangible personal property" includes electricity.

Sec. 8. 36 MRSA §1752, sub-§23, as enacted by PL 1989, c. 533, §§4 and 14, and c. 588, Pt. C, §2, is repealed and the following enacted in its place:

23. Video tapes; video equipment. "Video tapes" means prerecorded magnetic tapes used for noncommercial playback of images and sound on video equipment. It also includes other electronic audio and video media that provide for noncommercial interactive utilization by a person or persons. "Video equipment" means equipment used to play back video tapes, equipment used for recording images and sound for subsequent noncommercial playback and equipment used for noncommercial interactive utilization of electronic audio and video media.

Sec. 9. 36 MRSA §1752, sub-§24 is enacted to read:

24. Watercraft. "Watercraft" means any type of vessel, boat, canoe or craft designed for use as a means of transportation on water, other than a seaplane, including motors, electronic and mechanical equipment and other machinery, whether permanently or temporarily attached, which are customarily used in the operations of the watercraft.

Sec. 10. 36 MRSA §1760, sub-§§9-E and 9-F are enacted to read:

9-E. Electricity consumed in an electrolytic process. Electricity separately metered and consumed in any electrolytic process for the manufacture of tangible personal property for later sale. This subsection is repealed on July 1, 1991.

9-F. Fuel oil or coal. Fuel oil or coal, the by-products from the burning of which become an ingredient or component part of tangible personal property for later sale. This subsection is repealed on July 1, 1991.

Sec. 11. 36 MRSA §1760, sub-§12-A is enacted to read:

2 12-A. Packaging materials. Sales of containers, boxes,
4 crates, bags, cores, twines, tapes, bindings, wrappings, labels
6 and other packing, packaging and shipping materials to persons
8 for use in packing, packaging or shipping tangible personal
10 property sold by them or on which they have performed the service
12 of cleaning, pressing, dyeing, washing, repairing or
14 reconditioning in their regular course of business that are
16 transferred to the possession of the purchaser of that tangible
18 personal property.

20 Sec. 12. 36 MRSA §1760, sub-§66, as enacted by PL 1989, c.
22 502, Pt. B, §47, and c. 581, §20, is repealed and the following
24 enacted in its place:

26 66. Incorporated nonprofit providers of certain support
28 systems for single-parent families. Sales to incorporated
30 nonprofit organizations engaged primarily in providing support
32 systems for single-parent families for the development of
34 psychological and economic self-sufficiency.

36 Sec. 13. 36 MRSA §1760, sub-§67, as enacted by PL 1989, c.
38 501, Pt. P, §30, and c. 533, §8, is repealed and the following
40 enacted in its place:

42 67. Nonprofit home construction organizations. Sales to
44 local branches of incorporated nonprofit organizations whose
46 purpose is to construct low-cost housing for low-income people.

48 Sec. 14. 36 MRSA §1760, sub-§70, as enacted by PL 1989, c.
50 533, §8, is amended to read:

52 70. Organizations providing certain services for
54 hearing-impaired persons. Sales to incorporated nonprofit
56 organizations whose primary purposes are to promote public
58 understanding of hearing impairment and to assist
60 hearing-impaired persons through the dissemination of information
62 about hearing impairment to the general public and referral to
64 and coordination of community resources available to
66 hearing-impaired persons; and,

68 Sec. 15. 36 MRSA §1760, sub-§§72 to 75 are enacted to read:

70 72. Nonprofit housing development organization. Sales to
72 nonprofit organizations for the development of housing for
74 low-income people.

76 73. Seedlings for commercial forestry use. Sales of tree
78 seedlings for use in commercial forestry. This subsection takes
80 effect September 1, 1990.

82 74. Property used in production. Sales of tangible
84 personal property, other than fuel or electricity, that becomes

2 an ingredient or component part of, or that is consumed or
3 destroyed or loses its identity directly and primarily in either
4 the production of tangible personal property for later sale or
5 lease, other than lease for use in this State, or the production
6 of tangible personal property pursuant to a contract with the
7 United States Government or any agency of the United States
8 Government. Tangible personal property is "consumed or
9 destroyed" or "loses its identity" in that production if it has a
10 normal physical life expectancy of less than one year as a usable
11 item in the use to which it is applied.

12 75. Certain meals and lodging. Meals or lodging provided
13 to employees at their place of employment when the value of those
14 meals or that lodging is allowed as a credit toward the wages of
15 those employees.

16 **Sec. 16. 36 MRS §1811, first ¶,** as amended by PL 1989, c. 533,
17 §§10 and 14, and c. 588, Pt. B, §2, is repealed and the following
18 enacted in its place:

19 A tax is imposed on the value of all tangible personal
20 property and taxable services sold at retail in this State. The
21 rate of tax is 10% on the value of liquor sold in licensed
22 establishments as defined in Title 28-A, section 2, subsection
23 15, in accordance with Title 28-A, chapter 43; 7% on the value of
24 rental of living quarters in any hotel, rooming house, tourist or
25 trailer camp and rental for a period of less than one year of an
26 automobile; and 5% on the value of all other tangible personal
27 property and taxable services. Value is measured by the sale
28 price, except as otherwise provided.

29 **Sec. 17. 36 MRS §1812, sub-§1, ¶C,** as enacted by PL 1989, c.
30 588, Pt. B, §3, is repealed and the following enacted in its
31 place:

32 C. If the tax rate is 10%:

<u>Amount of Sale Price</u>	<u>Amount of Tax</u>
<u>\$0.01 to \$0.05, inclusive</u>	<u>0¢</u>
<u>.06 to .15, inclusive</u>	<u>1¢</u>
<u>.16 to .20, inclusive</u>	<u>2¢</u>
<u>.21 to .30, inclusive</u>	<u>3¢</u>
<u>.31 to .40, inclusive</u>	<u>4¢</u>
<u>.41 to .50, inclusive</u>	<u>5¢</u>
<u>.51 to .60, inclusive</u>	<u>6¢</u>
<u>.61 to .70, inclusive</u>	<u>7¢</u>
<u>.71 to .80, inclusive</u>	<u>8¢</u>
<u>.81 to .90, inclusive</u>	<u>9¢</u>
<u>.91 to 1.00, inclusive</u>	<u>10¢</u>

2 **Sec. 18. 36 MRSA §5203, sub-§1**, as repealed and replaced by PL 1989, c. 508, §20, is amended to read:

4 **1. Noncorporate.** A tax is imposed, for each taxable year, upon on every resident individual noncorporate taxpayer of this State, equal to the amount by which 3% of the excess of the taxpayer's alternative minimum taxable income, as defined in the Code, Section 55(b), over the taxpayer's Maine exemption amount, exceeds the taxpayer's liability for all other taxes under this Part, except withholding taxes, and that portion of the individual income tax arising from modifications pursuant to section 5122, subsection 1. For purposes of this subsection, "Maine exemption amount" means the sum of the taxpayer's exemption amount, as defined in the Code, Section 55(d) and, to the extent included in the taxpayer's alternative minimum taxable income, the taxpayer's income from obligations of the United States and railroad retirement benefits. Additionally, a tax is imposed for each taxable year on every nonresident individual noncorporate taxpayer with Maine-source Maine-source income equal to the tax computed under this subsection, as if the nonresident were a resident, and multiplied by the ratio of the nonresident's Maine-source alternative minimum taxable income to the nonresident's total alternative minimum taxable income.

24 **Sec. 19. 36 MRSA §5231**, as amended by PL 1973, c. 12, §6, is further amended to read:

28 **§5231. Extension of time for filing and payment**

30 **1. General.** The assessor may grant a reasonable extension of time for payment of tax or estimated tax or any installment thereof, or for filing any return, declaration, statement or other document required pursuant to this Part, on such terms and conditions as ~~he~~ the assessor may require. Except for a taxpayer who is outside the United States, ~~no such an~~ an extension for filing any return, declaration, statement or document, ~~shall~~ may not exceed 8 months.

38 **1-A. Federal extension.** When a taxable corporation or taxable entity is granted an extension of time within which to file its federal income tax return for any taxable year, the due date for filing the taxpayer's income tax or franchise tax return with respect to the tax imposed by this Part is automatically extended for an equivalent period plus 30 days.

46 **2. Security.** If any extension of time is granted for payment of any amount of tax, the assessor may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted, on such terms and conditions as the assessor may require.

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2 Sections 3 and 21 correct an error by omission and clarify
that only assessments for special benefits are precluded from the
Homestead exemption.

4
6 Sections 4 and 23 clarify that the repeal of the phantom
house lot legislation is effective for property tax years
beginning on or after April 1, 1990.

8
10 Section 5 removes certain exclusions from the definition of
"retail sale" and sections 10, 11 and 15 reenact them as
12 exemptions. This is being done solely for taxpayers' convenience
because it is felt that taxpayers will more readily find these
14 provisions in the exemption section than in the definition of
retail sale. This change has no substantive effect and should
16 not affect in any way the application or interpretation of these
provisions by the bureau or a court.

18 Section 6 ensures that certain fees are not included in the
definition of "sales price."

20
22 Section 7 clarifies the definition of "tangible personal
property."

24 Section 8 clarifies the definition of video taxes to include
video game rentals as a taxable transaction.

26
28 Section 9 corrects a subsection numbering problem.

30 Sections 12, 13 and 14 correct a subsection numbering
problem.

32 Sections 16 and 17 clarify the imposition of the sales tax
in taxable transactions.

34 Section 18 clarifies the definition of "individual"
36 taxpayers subject to the alternative minimum tax.

38 Section 19 clarifies an existing administrative procedure.

40 Section 20 closes a loophole in the circuit breaker program.

Reported by Senator Andrews for the Committee on Taxation.
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(4/6/90) (Filing No. S-668)