

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

## SECOND REGULAR SESSION - 1990

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Legislative Document

No. 2228

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S.P. 868

In Senate, January 25, 1990

Submitted by the Department of Finance pursuant to Joint Rule 24.

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator EMERSON of Penobscot.

Cosponsored by Representative SEAVEY of Kennebunkport, Representative TARDY of Palmyra and Representative NADEAU of Saco.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY

---

An Act Concerning Technical Changes to the Tax Laws.

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(EMERGENCY)



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

4  
Whereas, certain corrections and additions to the  
6 taxation-related laws must be made as soon as possible to avoid  
unintended problems; and

8  
Whereas, in the judgment of the Legislature, these facts  
10 create an emergency within the meaning of the Constitution of  
Maine and require the following legislation as immediately  
12 necessary for the preservation of the public peace, health and  
safety; now, therefore,

14  
**Be it enacted by the People of the State of Maine as follows:**

16  
Sec. 1. 36 MRSA §151, as amended by PL 1981, c. 364, §9, is  
18 further amended to read:

20 **§151. Review of determinations of State Tax Assessor**

22 Any person who is entitled by law to receive notice of a  
determination of the State Tax Assessor and who is aggrieved by  
24 that determination may petition in writing, within ~~15~~ 30 days  
after receipt of notice of that determination, for  
26 reconsideration by the State Tax Assessor of that determination.

28 If a petition for reconsideration is filed within the  
specified time period, the State Tax Assessor shall reconsider  
30 his the assessor's determination. If the petitioner has so  
requested in his the petition, the State Tax Assessor shall hold  
32 an informal conference with the petitioner to receive additional  
information and to hear argument regarding the protested  
34 determination and shall give the petitioner ~~10-days'~~ 10 days'  
notice of the time and place of the conference. The  
36 reconsideration, with or without an informal conference, shall is  
not be deemed to be an "adjudicatory proceeding" within the  
38 meaning of that term in the Maine Administrative Procedure Act.

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

46 Sec. 2. 36 MRSA §1752, sub-§11, as amended by PL 1989, c. 501,  
Pt. V, §§2, 5 and 6, and c. 501, Pt. V, §§3 and 6, and c. 533,  
48 §§1 and 14, is repealed and the following enacted in its place:

50 11. Retail sale. "Retail sale" means any sale of tangible  
personal property in the ordinary course of business for any

2 purpose other than for resale, except resale as a casual sale, in  
3 the form of tangible personal property. "Retail sale" also means  
4 any sale of a taxable service in the ordinary course of business  
5 for any purpose other than for resale, except resale as a casual  
6 sale.

7  
8 A. "Retail sale" includes:

9  
10 (1) Conditional sales, installment lease sales and any  
11 other transfer of tangible personal property when the  
12 title is retained as security for the payment of the  
13 purchase price and is intended to be transferred later;  
14 and

15  
16 (2) Sale of products for internal human consumption to  
17 a person for resale through coin-operated vending  
18 machines when sold to a retailer whose gross receipts  
19 from the retail sale of tangible personal property  
20 derived through sales from vending machines are more  
21 than 50% of the retailer's gross receipts. The tax  
22 must be paid by the retailer to the State.

23 B. "Retail sale" does not include:

24  
25 (1) Any casual sale;

26  
27 (2) Any sale by a personal representative in the  
28 settlement of an estate, unless the sale is made  
29 through a retailer, or unless the sale is made in the  
30 continuation or operation of a business;

31  
32 (3) The sale to a person engaged in the business of  
33 renting automobiles, of automobiles, integral parts of  
34 automobiles or accessories to automobiles, for rental  
35 or for use in an automobile rented, on a short-term  
36 basis; or

37  
38 (4) The sale to a person engaged in the business of  
39 renting video tapes and video equipment, of video tapes  
40 or video equipment for rental.

41 **Sec. 3. 36 MRS §1752, sub-§14, ¶B, as repealed and replaced**  
42 **by PL 1987, c. 497, §24, is amended to read:**

43  
44 **B. "Sale price" does not include:**

45  
46 **(1) Discounts allowed and taken on sales;**

47  
48 **(2) Allowances in cash or by credit made upon the**  
49 **return of merchandise or with respect to fabrication**  
50 **services pursuant to warranty;**

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

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

10 (5) Any amount charged or collected, in lieu of a  
11 gratuity or tip, as a specifically stated service  
12 charge, when that amount is to be disbursed by a hotel,  
13 motel, restaurant or other eating establishment to its  
14 employees as wages;

16 (6) The amount of any tax imposed by the United States  
17 upon on or with respect to retail sales, whether  
18 imposed upon the retailer or the consumer, except any  
19 manufacturers', importers', alcohol or tobacco excise  
20 tax; ~~or~~

22 (7) The cost of transportation from the retailer's  
23 place of business or other point from which shipment is  
24 made directly to the purchaser, provided that those  
25 charges are separately stated and the transportation  
26 occurs by means of common carrier, contract carrier or  
27 the United States mail;

28 (8) The fee imposed by Title 10, section 1169,  
29 subsection 11; or

31 (9) The fee imposed by section 4832, subsection 1.

32 **Sec. 4. 36 MRSA §1752, sub-§17 is amended to read:**

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

42 **Sec. 5. 36 MRSA §1752, sub-§23, as enacted by PL 1989, c. 533,**  
43 **§§4 and 14, and c. 588, Pt. C, §2, is repealed and the following**  
44 **enacted in its place:**

46 **23. Video tapes and video equipment.** "Video tapes" means  
47 prerecorded magnetic tapes used for noncommercial playback of  
48 images and sound on video equipment. "Video equipment" means  
49 equipment used to play back video tapes and equipment used for  
50 recording images and sound for subsequent noncommercial playback.

2                   **Sec. 6. 36 MRSA §1752, sub-§24** is enacted to read:

4                   **24. Watercraft.** "Watercraft" means any type of vessel,  
6 boat, canoe or craft designed for use as a means of  
8 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.

10                   **Sec. 7. 36 MRSA §1760, sub-§§9-E and 9-F** are enacted to read:

12                   **9-E. Electricity consumed in an electrolytic process.**  
14 Electricity separately metered and consumed in any electrolytic  
16 process for the manufacture of tangible personal property for  
later sale. This subsection is repealed on July 1, 1991.

18                   **9-F. Fuel oil or coal.** Fuel oil or coal, the by-products  
20 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.

22                   **Sec. 8. 36 MRSA §1760, sub-§12-A** is enacted to read:

24                   **12-A. Packaging materials.** Sales of containers, boxes,  
26 crates, bags, cores, twines, tapes, bindings, wrappings, labels  
28 and other packing, packaging and shipping materials to persons  
30 for use in packing, packaging or shipping tangible personal  
32 property sold by them or on which they have performed the service  
of cleaning, pressing, dyeing, washing, repairing or  
reconditioning in their regular course of business which are  
transferred to the possession of the purchaser of that tangible  
personal property.

34                   **Sec. 9. 36 MRSA §1760, sub-§13** is repealed.

36                   **Sec. 10. 36 MRSA §1760, sub-§66,** as enacted by PL 1989, c.  
38 502, Pt. B, §47, and c. 581, §20, is repealed and the following  
enacted in its place:

40                   **66. Incorporated nonprofit providers of certain support**  
42 systems for single-parent families. Sales to incorporated  
44 nonprofit organizations engaged primarily in providing support  
systems for single-parent families for the development of  
psychological and economic self-sufficiency;

46                   **Sec. 11. 36 MRSA §1760, sub-§67,** as enacted by PL 1989, c.  
48 501, Pt. P, §30, and c. 533, §8, is repealed and the following  
enacted in its place:

2       67. Nonprofit home construction organizations. Sales to  
3       local branches of incorporated nonprofit organizations whose  
4       purpose is to construct low-cost housing for low-income people;

6               Sec. 12. 36 MRSA §1760, sub-§§72 to 75 are enacted to read:

8       72. Nonprofit housing development organization. Sales to  
9       nonprofit organizations for the development of housing for  
10       low-income people;

12       73. Seedlings for commercial forestry use. Sales of tree  
13       seedlings for use in commercial forestry. This subsection shall  
14       take effect September 1, 1990;

16       74. Property used in production. Sales of tangible  
17       personal property, other than fuel or electricity, which becomes  
18       an ingredient or component part of, or which is consumed or  
19       destroyed or loses its identity directly and primarily in either  
20       the production of tangible personal property for later sale or  
21       lease, other than lease for use in this State, or the production  
22       of tangible personal property pursuant to a contract with the  
23       United States Government or any agency of the United States  
24       Government. Tangible personal property is "consumed or  
25       destroyed" or "loses its identity" in that production if it has a  
26       normal physical life expectancy of less than one year as a usable  
27       item in the use to which it is applied; and

28       75. Certain meals and lodging. Meals or lodging provided  
29       to employees at their place of employment when the value of those  
30       meals or that lodging is allowed as a credit toward the wages of  
31       those employees.

32               Sec. 13. 36 MRSA §1811, first ¶, as amended by PL 1989, c. 533,  
33       §§10 and 14, and c. 588, Pt. B, §2, is repealed and the following  
34       enacted in its place:

36               A tax is imposed on the value of all tangible personal  
37       property and taxable services sold at retail in this State. The  
38       rate of tax is 10% on the value of liquor sold in licensed  
39       establishments as defined in Title 28-A, section 2, subsection  
40       15, in accordance with Title 28-A, chapter 43; 7% on the value of  
41       rental of living quarters in any hotel, rooming house, tourist or  
42       trailer camp and rental for a period of less than one year of an  
43       automobile; and 5% on the value of all other tangible personal  
44       property and taxable services. Value is measured by the sale  
45       price, except as otherwise provided.

46               Sec. 14. 36 MRSA §1812, sub-§1, ¶C, as enacted by PL 1989, c.  
47       588, Pt. B, §3, is repealed and the following enacted in its  
48       place:

50               C. If the tax rate is 10%:

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

16            **Sec. 15. 36 MRSA §5203, sub-§1**, as repealed and replaced by PL  
17 1989, c. 508, §20, is amended to read:

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

40            **Sec. 16. 36 MRSA §5231**, as amended by PL 1973, c. 12, §6, is  
41 further amended to read:

42            **§5231. Extension of time for filing and payment**

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



2        1-A. Federal extension.   When a taxable corporation or  
4        taxable entity is granted an extension of time within which to  
6        file its federal income tax return for any taxable year, the due  
8        date for filing the taxpayer's income tax or franchise tax return  
10       with respect to the tax imposed by this Part is automatically  
12       extended for an equivalent period plus 30 days.

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

26       **Emergency clause.** In view of the emergency cited in the  
28       preamble, this Act shall take effect when approved.

### 20                                STATEMENT OF FACT

22       The bill does the following.

24       1.   The bill extends the date petitions for reconsideration  
26       are due. The bill also increases the automatic extension date  
28       for corporations to 30 days beyond the federal extended due date  
30       for the filing of income tax returns.

32       2.   The bill redefines the term "retail sales" and relocates  
34       certain provisions to correct inconsistencies in the law.

36       3.   The bill removes the lemon law arbitration fee and the  
38       solid waste advance disposal fee from the taxable sale price of  
40       property.

42       4.   The bill redefines "watercraft" to make it consistent  
44       with the Maine Revised Statutes, Title 36, chapter 112.

46       5.   The bill repeals the exemption for religious materials.

48       6.   The bill also restructures the sales tax bracket to  
50       incorporate changes that were made in the First Regular Session  
52       of the 114th Legislature.

54       7.   The bill changes the term individual to noncorporate  
56       taxpayer so that fiduciary files will be included in the minimum  
58       tax provision.