

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48

STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1731, L.D. 2390, Bill, "An Act to Provide Tax Amnesty and Necessary Administrative Support to the Bureau of Taxation"

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

PART A

Sec. A-1. 36 MRSA c. 913 is enacted to read:

CHAPTER 913

TAX AMNESTY

§6551. Maine Tax Amnesty Program

There is established the Maine Tax Amnesty Program. This program is intended to encourage delinquent taxpayers to comply with the State's tax laws to enable the assessor to identify and collect previously unreported taxes or accelerate collection of certain delinquent tax liabilities. The long-term goal of this program is to improve taxpayer compliance with the State's tax law.

§6552. Definitions

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

1. Bureau. "Bureau" means the Bureau of Taxation.

2. Taxpayer. "Taxpayer" means any individual, firm, partnership, association, society, club, corporation, estate, trust, business trust, receiver, assignee, or any other group or

2 combination acting as a unit, a taxable entity, the State or
3 Federal Government, or any political subdivision or agency of
4 government required to file a return under this Title or to pay,
5 withhold and pay over, or collect and pay over any tax imposed by
6 this Title.

8 **§6553. Administration**

9 The assessor shall administer the Maine Tax Amnesty
10 Program. The amnesty program applies to tax liabilities
11 delinquent as of April 17, 1990, including tax on returns not
12 filed, tax liabilities according to the records of the bureau as
13 of April 17, 1990, or tax liabilities not reported or established
14 but delinquent as of April 17, 1990. A taxpayer may participate
15 in the amnesty program whether or not the taxpayer is under audit
16 and without regard to whether the amount due is subject to a
17 pending administrative or judicial proceeding, except that this
18 does not include pending criminal action. A taxpayer may
19 participate in the amnesty program to the extent of the
20 uncontested portion of an assessed liability. Participation in
21 the program is conditioned upon the taxpayer's agreement that the
22 right to protest or pursue an administrative or judicial
23 proceeding with regard to returns filed under the amnesty program
24 or to claim any refund of money paid under the amnesty program is
25 barred. A taxpayer with a tax liability within the limitations
26 of this chapter is absolved from criminal or civil prosecution or
27 civil penalties, plus 1/2 of the interest associated with any
28 such liability, if the taxpayer:

29 1. Return filed. Properly completes and files an amnesty
30 tax return as required by the assessor;

31 2. Tax and interest paid. Pays all tax and interest as
32 determined on the amnesty tax return before the end of the
33 amnesty period or enters into a payment plan approved by the
34 assessor;

35 3. No criminal action pending. Is not currently charged
36 with or under active investigation for a criminal offense arising
37 from a violation of the state tax law as provided in this Title
38 or Title 17-A; and

39 4. Illegal activities. Is not reporting taxes arising from
40 otherwise illegal activities.

41 **§6554. Exemption; leased vehicles in interstate commerce**

42 Notwithstanding section 6553, a taxpayer participating in
43 the amnesty program due to a tax liability arising from the use
44 in the State of a vehicle that fails or failed to qualify for the
45 exemption under section 1760, subsection 41, because the vehicle
46 is leased, is absolved from criminal or civil prosecution
47
48
49
50
51
52

2 or civil penalties, plus all of the interest associated with any
3 such liability.

4 **§6555. Undisclosed liabilities**

6 Nothing in this chapter may be construed to prohibit the
7 assessor from instituting civil or criminal proceedings against
8 any taxpayer with respect to any amount of tax that is not
9 disclosed on the amnesty return.

10 **§6556. Amnesty period**

12 The time period during which an amnesty return may be filed
13 is November 1, 1990, to December 31, 1990.

14 **§6557. Amnesty return**

16 The assessor shall prepare and make available the amnesty
17 return. The return and associated guidelines prepared by the
18 assessor, which govern participation in the Maine Tax Amnesty
19 Program, are exempt from the Maine Administrative Procedure Act.
20 The application requires the approval of the assessor. The
21 assessor may deny any application not consistent with the Maine
22 Tax Amnesty Program.

24 **§6558. Payment plan**

26 The assessor may enter into an installment agreement in
27 cases of severe hardship in lieu of the complete payment of all
28 tax and interest as determined on the amnesty return. In such
29 cases, 25% of the total liability must be paid with the amnesty
30 return and the balance must be paid in not more than 6 monthly
31 installments. Failure of the taxpayer to make the agreed
32 payments in a timely fashion voids the application of the amnesty
33 program to that taxpayer. All such agreements and payments must
34 include interest at the rate of 12% per annum on the tax
35 outstanding.

36 **Sec. A-2. Amnesty report.** The State Tax Assessor shall
37 analyze and report on the effectiveness of the Maine Tax Amnesty
38 Program. This report must include at least the following
39 information:

40 1. The number of taxpayers that participated in the Maine
41 Tax Amnesty Program;

42 2. The amount of money generated by the program;

43 3. The amnesty-related expenses of the Bureau of Taxation
44 for the period of time before the amnesty period, during the
45 amnesty period and immediately following the amnesty period until
46 June 30, 1991;

2 4. The effectiveness of the increased enforcement measures
4 in collecting tax receivables during the period January 1, 1991,
to December 1, 1991;

6 5. Recommendations for changes, improvements or additions
8 to tax compliance enforcement procedures; and

10 6. Any other information the assessor chooses to include.

12 This report must be presented to the Joint Standing
14 Committee on Taxation during the Second Regular Session of the
16 115th Legislature by February 1, 1992. The committee shall
18 review the report and submit its own report, together with any
necessary implementing legislation, recommending continuation or
changes in enforcement procedures. This report must be made to
the First Regular Session of the 116th Legislature by December 1,
1992.

20 **PART B**

22 **Sec. B-1. 36 MRSA §113 is enacted to read:**

24 **§113. Audit and collection expenses**

26 The assessor may pay appropriate charges arising from tax
28 audit or collection activities of the Bureau of Taxation or its
agents. Payment may be made from the revenue account benefited
by the activity for which the charge is made.

30 **Sec. B-2. Appropriation.** The following funds are appropriated
32 from the General Fund to carry out the purposes of this Act.

34 **1990-91**

36 **FINANCE, DEPARTMENT OF**

38 **Bureau of Taxation**

40	Positions	(7)
	Personal Services	\$210,000
42	All Other	45,000
	Capital Expenditures	50,000
44		
46	Provides funds to hire and support 7	
	additional compliance personnel to generate	
48	an additional \$2,000,000 in fiscal year	
	1990-91.	
50	All Other	\$150,000

COMMITTEE AMENDMENT "A" to H.P. 1731, L.D. 2390

2 Provides funds to reimburse the Office of
3 the Attorney General for the services of 3
4 attorneys or paralegal professionals in the
5 enforcement of the State's tax laws. This
6 is not intended to substitute for the
7 resources currently allocated to serve in
8 matters relating to the needs of the Bureau
of Taxation.

10	Positions - Legislative Count	(9)
	Personal Services	\$490,000
12	All Other	1,195,000
	Capital Expenditures	67,000

14 Provides funds to upgrade the Bureau of
15 Taxation's automated information resources.
16 It funds the first year of Maine Automated
17 Tax System project.

20	Positions - Legislative Count	(2)
	Personal Services	\$80,000
22	All Other	205,000
	Capital Expenditures	15,000

24 Provides funds for staff and resources to
25 manage the Maine Tax Amnesty Program.

28	Personal Services	\$30,000
	All Other	10,000
30	Capital Expenditures	10,000

32 Provides funds for additional program
33 toll-free telephone assistance relative to
34 the Maine Tax Amnesty Program. The 2
35 project positions are for 6 months during
36 the amnesty period.

38	DEPARTMENT OF FINANCE	
	TOTAL	<u>\$2,557,000</u>

40

PART C

42

43 **Sec. C-1. 36 MRSA §173, last ¶, as enacted by PL 1985, c. 691,**
44 **§4, is amended to read:**

46 Warrants shall be are returnable within one-year 5 years of
47 issuance. New warrants may be issued on any such certificate for
48 collection of sums remaining unsatisfied, upon the filing of the
49 certificate described in subsection 1, within 2 years from the
50 return day of the last preceding warrant for--sums--remaining
unsatisfied.

2 Any person who is required under this Title to collect,
truthfully account for and pay over any tax imposed by this Title
4 and who intentionally fails to collect or truthfully account for
or pay over that tax at the time required by law or rule shall,
6 in addition to any other penalties provided by law, be is guilty
of a Class D crime, except that any person who has a prior
8 conviction under this section is guilty of a Class C crime rather
than a Class D crime. For purposes of this section, the date of
10 the prior conviction must precede the commission of the offense
being enhanced by no more than 10 years. The date of conviction
12 is deemed the date that sentence is imposed even though an appeal
14 was taken. For purposes of this section, the word "person"
16 includes, in addition to its defined meaning in section 111,
18 subsection 3, any officer, director, member, agent or employee of
another person who, in that capacity, is responsible for the
control or management of the funds and finances of that person or
is responsible for either the collection or payment of that
retailer's taxes.

20 Sec. D-2. 36 MRSA §5330, as repealed and replaced by PL 1977,
c. 696, §295, is amended to read:

22 **§5330. Attempts to evade or defeat tax**

24
26 Any person who intentionally attempts in any manner to evade
or defeat any tax imposed by this Part or the payment thereof
28 shall, in addition to any other penalties provided by law, be is
guilty of a Class C crime, except that violation of this section
30 is a Class B crime if the person has a prior conviction for
violation of this section, or of section 184, section 5332 or
32 section 5333. For purposes of this section, the date of prior
conviction must precede the commission of the offense being
34 enhanced by no more than 10 years. The date of conviction is
deemed the date that sentence is imposed.

36 Sec. D-3. 36 MRSA §5332, as amended by PL 1983, c. 490, is
further amended to read:

38 **§5332. Failure to file return, supply information, pay tax**

40
42 Any person required under this Part to pay any tax or
estimated tax, or required by this Part or regulation prescribed
thereunder to make a return, other than a return of estimated
44 tax, keep any records or supply any information, who
intentionally fails to pay that tax or estimated tax, make the
46 return, keep the records or supply the information, at the time
or times required by law or regulation, shall, in addition to
48 other penalties provided by law, be is guilty of a Class D crime,
except that violation of this section is a Class C crime if the
50 person has a prior conviction for violation of this section, or
of section 184, section 5330 or section 5333. For purposes of
52 this section, the date of prior conviction must precede the

2 commission of the offense being enhanced by no more than 10
3 years. The date of conviction is deemed the date that sentence
4 is imposed. In determining whether a person is required to make
5 a return under this Part, proof that the person filed a federal
6 income tax return for a taxable year ~~shall-give~~ gives rise to a
7 presumption that the person was required to file a federal income
8 tax return for that taxable year.

9
10 **Sec. D-4. 36 MRSA §5333, as repealed and replaced by PL 1977,**
11 **c. 696, §295, is amended to read:**

12 **§5333. False statements**

13
14 Any person who knowingly makes and subscribes any return,
15 statement or other document, ~~which that~~ that contains or is verified
16 by a written declaration that it is made under the penalties of
17 perjury, and ~~which-he that~~ that the person does not believe to be true
18 and correct as to every material matter; or knowingly aids or
19 procures the preparation or presentation in a matter arising
20 under this Part of a return, affidavit, claim or other document
21 ~~which that~~ is fraudulent or is false as to any material matter
22 shall-be is guilty of a Class D crime, except that violation of
23 this section is a Class C crime if the person has a prior
24 conviction for violation of this section, or of section 184,
25 section 5330 or section 5332. For purposes of this section, the
26 date of prior conviction must precede the commission of the
27 offense being enhanced by no more than 10 years. The date of
28 conviction is deemed the date that sentence is imposed.

29
30 **PART E**

31
32 **Sec. E-1. 9-B MRSA §161, sub-§2, ¶H, as amended by PL 1985, c.**
33 **311, §2, is further amended to read:**

34
35 ~~H. The making-of-reports-to-the-State-Tax-Assessor-required~~
36 ~~under--Title--36,--section--3851--and--the~~ examination of the
37 financial records authorized by Title 36, section 112 or
38 section 176-A, subsection 4;

39
40 **Sec. E-2. 36 MRSA §176, as amended by PL 1987, c. 772, §3, is**
41 **repealed.**

42
43 **Sec. E-3. 36 MRSA §176-A is enacted to read:**

44
45 **§176-A. Levy upon property**

46
47 **1. Definitions. As used in this section, unless the**
48 **context otherwise indicates, the following terms have the**
49 **following meanings.**
50

2 installment agreements, the provisions of this Title
3 relating to redemption of property and release of liens on
4 property and the procedures applicable to the redemption of
5 the property and the release of the lien on property under
6 this Title.

7
8 B. If any person liable to pay any delinquent tax neglects
9 or refuses to pay that tax within 10 days after demand, it
10 is lawful for the assessor to collect the tax and such
11 further sum as is sufficient to cover the expenses of the
12 levy, by levy upon all property belonging to that person
13 liable to levy. If the assessor makes a finding that the
14 collection of the tax is in jeopardy, notice and demand for
15 immediate payment of the tax may be made by the assessor
16 and, upon failure or refusal to pay that tax, collection of
17 the tax by levy is lawful without regard to the 10-day
18 period provided in this section.

19
20 C. If any property upon which levy has been made is not
21 sufficient to satisfy the claim of the State, the assessor
22 may, thereafter and as often as necessary, proceed to levy
23 upon any other property of the person against whom the claim
24 exists liable to levy until the amount due together with all
25 expenses are fully paid.

26 D. With respect to a levy described in this subsection, the
27 assessor shall promptly release the levy when the liability
28 from which the levy arose is satisfied or becomes
29 unenforceable due to lapse of time and shall promptly notify
30 the person upon whom the levy is made that the levy has been
31 released.

32
33 E. The effect of a levy on salary or wages payable to or
34 received by a taxpayer is continuous from the date the levy
35 is first made until the liability out of which the levy
36 arose is satisfied. A levy on any other intangible personal
37 property or rights to intangible personal property remains
38 in effect until 6 months after the date that notice of levy
39 and demand under subsection 3, paragraph A, is served on the
40 person in possession of or liable to the taxpayer with
41 respect to intangible personal property, including property
42 that is first possessed or liabilities that arise after the
43 date of service of the notice of levy and demand; except
44 that a levy upon property held by a financial institution
45 described in subsection 3, paragraph A, only extends to
46 accounts in existence on the date the notice of levy and
47 demand is served on the financial institution, but includes
48 deposits made or collected in those accounts after the
49 notice is served.

50

3. Surrender of property or discharge of obligation; exceptions; personal liability; penalty. A surrender of property or discharge of obligation is governed by this subsection.

A. Except as otherwise provided in paragraph B, any person in possession of, or obligated with respect to, property or rights to property subject to levy upon which a levy has been made shall, upon demand of the assessor, surrender any such property or rights or discharge any such obligation to the assessor, except that part of the property or rights as is, at the time of the demand, subject to an attachment or execution under any judicial process. It is a defense to the liability imposed by this subsection that the person refusing to comply with the terms of a notice of a levy or that person's bailor has a valid claim against the delinquent taxpayer accruing prior to service of the notice or a valid security interest or lien upon the property of the taxpayer perfected prior to service of the notice; but this defense exonerates the person refusing to comply from liability only to the extent of that claim, security interest or lien.

Any financial institution chartered under state or federal law, including, but not limited to, trust companies, savings banks, savings and loan associations, national banks and credit unions, shall surrender any deposits, including any interest in the financial institution that would otherwise be required to be surrendered under this subsection only after 21 days after service of levy. Except as provided in subsection 5, paragraph D, with respect to a levy on salary or wages, any person in possession of, or obligated with respect to, property subject to a continuing levy against intangible personal property, which property is first possessed or which obligation first arises subsequent to service of a notice of levy on such person, shall, upon demand of the assessor, surrender the property or rights, or discharge the obligation to the assessor within 30 days after the property is first possessed or the obligation first arises.

B. A levy with respect to a life insurance or endowment contract is governed by this paragraph.

(1) A levy on an organization with respect to a life insurance or endowment contract issued by that organization, without necessity for the surrender of the contract document, constitutes a demand by the assessor for payment of the amount described in subparagraph (2) and the exercise of the right of the person against whom the tax is assessed to the advance of that amount. The organization shall pay over the amount 90 days after service of notice of levy. Notice

COMMITTEE AMENDMENT "A" to H.P. 1731, L.D. 2390

2 must include a certification by the assessor that a
3 copy of the notice has been mailed to the person
4 against whom the tax is assessed at that person's last
5 known address.

6 (2) A levy under this paragraph is deemed to be
7 satisfied if the organization pays over to the assessor
8 the amount that the organization could have advanced to
9 the person against whom the tax is assessed on the date
10 prescribed in subparagraph (1) for the satisfaction of
11 the levy, increased by the amount of any advance,
12 including contractual interest, made to the person on
13 or after the date the organization had actual notice or
14 knowledge of the existence of the lien with respect to
15 which the levy is made, other than an advance,
16 including contractual interest, made automatically to
17 maintain the contract in force under an agreement
18 entered into before the organization had any such
19 notice or knowledge.

20 (3) The satisfaction of a levy under subparagraph (2)
21 is without prejudice to any civil action for the
22 enforcement of any lien imposed by section 175-A with
23 respect to the contract.

24
25
26 C. Any person who fails or refuses to surrender any
27 property or rights to property, subject to levy, upon demand
28 by the assessor:

29
30 (1) Is liable in person and estate to the State in a
31 sum equal to the value of the property not so
32 surrendered, but not exceeding the amount of taxes for
33 the collection of which the levy has been made,
34 together with costs and interests on the sum from the
35 date of the levy. Any amount, other than costs,
36 recovered under this paragraph must be credited against
37 the tax liability for the collection of which the levy
38 was made; and

39
40 (2) Without reasonable cause, is liable for a penalty
41 equal to 50% of the amount recoverable under
42 subparagraph (1). A part of the penalty may not be
43 credited against the tax liability for the collection
44 of which the levy was made. It is lawful for the
45 assessor to collect the liability as determined by this
46 paragraph by levy upon the person's property in
47 accordance with the provisions of this section.

48
49
50 D. Any person in possession of, or obligated with respect
51 to, property subject to levy upon which a levy has been
52 made, who, upon demand by the assessor, surrenders that
53 property or rights to that property, or discharges the

2 obligation to the assessor, or who pays a liability under
3 paragraph C, subparagraph (1) is discharged from any
4 obligation or liability to the delinquent taxpayer with
5 respect to the property arising from the surrender or
6 payment. In the case of a levy satisfied pursuant to
7 paragraph B, the organization is discharged from any
8 obligation or liability to any beneficiary arising from the
9 surrender or payment.

10 4. Books or records relating to property subject to levy.
11 If a levy has been made or is about to be made on any property,
12 any person having custody or control of any books or records
13 containing evidence or statements relating to the property
14 subject to levy shall, upon demand of the assessor, exhibit those
15 books and records to the assessor. Failure to comply with such
16 an order is a Class E crime.

17 5. Exempt property. This subsection governs property
18 exempt from levy.

19 A. The following property is exempt from levy:

20
21
22 (1) Items of wearing apparel and school books
23 necessary for the taxpayer or the members of the
24 taxpayer's family:

25
26
27 (2) If the taxpayer is the head of a family, the fuel,
28 provisions, furniture and personal effects in the
29 taxpayer's household, arms for personal use, livestock
30 and poultry of the taxpayer, the total value of which
31 does not exceed \$1,500:

32
33 (3) Books and tools necessary for the trade, business
34 or profession of the taxpayer, the value of which, in
35 the aggregate, does not exceed \$1,000:

36
37 (4) Any amount payable to the taxpayer with respect to
38 the taxpayer's unemployment, including any portion
39 payable with respect to dependents, under an
40 unemployment compensation law of the United States or
41 any state:

42
43 (5) Mail, addressed to any person, that has not been
44 delivered to the addressee:

45
46 (6) Annuity or pension payments under the federal
47 Railroad Retirement Act of 1974, 45 United States Code,
48 Section 231, et seq., benefits under the federal
49 Railroad Unemployment Insurance Act, 45 United States
50 Code, Section 351, special pension payments received by
51 a person whose name has been entered on the Army, Navy,
52 Air Force and Coast Guard Medal of Honor Roll, 38

2 United States Code, Section 562 (1982), and annuities
3 based on retired or retainer pay under 10 United States
4 Code, Chapter 73 (1982):

6 (7) If the taxpayer is required by judgment of a court
7 of competent jurisdiction, entered prior to the date of
8 levy, to contribute to the support of minor children,
9 as much of the taxpayer's salary, wages or other income
10 as is necessary to comply with such a judgment;

12 (8) Any amount payable to or received by a taxpayer as
13 wages or salary for personal services, during any
14 period, to the extent that the total of the amounts
15 payable to or received by the taxpayer during that
16 period does not exceed the applicable exempt amount
17 determined under paragraph D; and

18 (9) The principal residence of the taxpayer, unless
19 the assessor has made a finding pursuant to subsection
20 2, paragraph B, that the tax is in jeopardy or the
21 assessor personally approves in writing the levy of
22 such property.

24 B. The officer seizing property of the type described in
25 paragraph A shall appraise and set aside to the owner the
26 amount of the property declared to be exempt. If the
27 taxpayer objects at the time of the seizure to the valuation
28 fixed by the officer making the seizure, the assessor shall
29 summon 3 disinterested individuals who shall make the
30 valuation.

32 C. Notwithstanding any other law, no property or rights to
33 property are exempt from levy other than the property
34 specifically made exempt by paragraph A.

36 D. A levy upon salary and wages must specify the amount of
37 percentage to be surrendered and delivered to the assessor
38 by the taxpayer's employer for each pay period, consistent
39 with the provisions of this paragraph. Salaries and wages
40 are exempt from levy to the extent of 75% of the taxpayer's
41 disposable earnings for any pay period, or an amount equal
42 to the federal minimum hourly wage multiplied by 30,
43 multiplied by the number of weeks in the pay period,
44 whichever is less. A levy on salaries and wages is
45 continuous from the date on which the notice of levy is
46 served until the delinquency is discharged and applies to
47 all pay periods commencing after the date on which the
48 notice of levy is served. The assessor shall notify the
49 taxpayer's employer immediately upon discharge of the
50 delinquency that the levy has been discontinued.

2 6. Seizure of property; notice; sale. Seizure, notice of
3 seizure and sale of seized property are governed by this
4 subsection.

6 A. As soon as practicable after seizure of property, the
7 assessor shall give notice in writing to the owner of the
8 property, or, in the case of personal property, the
9 possessor of the property, or leave notice at the owner's or
10 possessor's usual place of abode or business, if any, within
11 the State. If the owner or possessor cannot be readily
12 located, or has no dwelling or place of business within the
13 State, the notice may be mailed to that person's last known
14 address. In the case of real property, the notice must be
15 filed in the registry of deeds in the county where the
16 property is located. The notice must specify the sum
17 demand and contain:

18 (1) In the case of personal property, an account of
19 the property seized; and

20 (2) In the case of real property, a description with
21 reasonable certainty of the property seized.

24 In the case of levy on a motor vehicle that is the subject
25 of a Certificate of Title issued by the Secretary of State,
26 a copy of the notice must be filed with the Secretary of
27 State, who shall note the levy in the records of ownership
28 of the motor vehicle in question. In the case of levy on
29 personal property, a security interest in which may be
30 perfected by filing in the office of the Secretary of State
31 pursuant to Title 11, section 9-401, a copy of the notice
32 must be filed in the office of the Secretary of State, who
33 shall file the notice of levy as a financing statement.

34 B. The assessor, as soon as practicable after the seizure
35 of the property, shall give notice to the owner or possessor
36 in the manner prescribed in paragraph A and cause a
37 notification to be published in a newspaper of general
38 circulation within the county where the seizure is made, or,
39 if there is no such newspaper, post the notice at the city
40 or town hall nearest the place where the seizure is made and
41 in not less than 2 other public places. In the case of real
42 property, the notice must be served on all persons holding
43 an interest of record, including, without limitation,
44 recorded leases and security interest of all types, in the
45 property as reflected at the time the notice of levy is
46 recorded by the indices of the registry of deeds in the
47 county where the property is located. In the case of
48 personal property that is a motor vehicle subject to a
49 Certificate of Title issued by the Secretary of State,
50 notice must be served on all persons holding a security
51 interest of record in the motor vehicle as set forth in the
52

2 records of the Secretary of State. In the case of personal
3 property that may be the subject of a security interest
4 perfected by filing in the office of the Secretary of State
5 pursuant to Title 11, section 9-401, notice must be served
6 upon all secured parties claiming an interest in the
7 property seized as reflected at the time the notice of levy
8 is recorded in the records maintained by the Secretary of
9 State pursuant to Title 11. The notice must specify the
10 property to be sold, subject to the liabilities of prior
11 encumbrances, if any, and the time, place, manner and
12 conditions of the sale. If levy is made without regard to
13 the 10-day period provided in subsection 2, public notice of
14 sale of the property seized may not be made within the
15 10-day period unless subsection 7 applies. It is a Class E
16 crime to intentionally remove or deface the posted notice of
17 sale prior to the scheduled sale date, unless the property
18 has been redeemed or the sale is for some other reason
19 canceled. The assessor or any law enforcement officer may
20 enter onto the land if necessary to carry out the purposes
21 of this section.

22 C. If any property liable to levy is not divisible to
23 enable the assessor by sale of a part of the property to
24 raise the whole amount of the tax and expenses, the whole
25 property must be sold.

26 D. The time of sale may be not less than 10 days nor more
27 than 40 days from the time of giving notice under paragraph
28 B. The sale may be adjourned from time to time but
29 adjournments may not be for a period to exceed a total of 30
30 days. Notice of any adjournments of the sale must be posted
31 in the public places within the county where the notice
32 prescribed in paragraph B was posted.

33 E. Before the sale, the assessor shall determine a minimum
34 price for which the property must be sold. If no person
35 offers the amount of the minimum price for the property, the
36 property is declared to be purchased at that price for the
37 State; otherwise the property is declared to be sold to the
38 highest bidder. In determining the minimum price, the
39 assessor shall take into account the expense of making the
40 levy and sale.

41 (1) The assessor may by rule prescribe the manner and
42 other conditions of the sale of property seized by levy
43 or purchased by the sale.

44 (2) If payment in full is required at the time of
45 acceptance of a bid and is not paid at that time, the
46 assessor shall forthwith proceed to again sell the
47 property in the manner provided in this subsection. If
48 the conditions of the sale permit part of the payment
49 to be made at a later date, the assessor shall
50 accept such payment and the sale shall be deemed
51 complete.

2 to be deferred, and if a deferred part is not paid
within the prescribed period:

4 (a) Suit may be instituted against the purchaser
for the purchase price or the part of the price
6 that has not been paid, together with interest
from the date of the sale; or

8 (b) In the discretion of the assessor, the sale
10 may be declared by the assessor to be void for
failure to make full payment of the purchase price
12 and the property may again be advertised and sold
as provided in this subsection. In the event of a
14 readvertisement and sale, any new purchaser
receives the property, or rights to the property,
16 free and clear of any claim or right to the former
defaulting purchaser, of any nature whatsoever,
18 and the amount paid on the bid price by the
defaulting purchaser is forfeited.

20 (3) Only the right, title and interest of the
22 delinquent taxpayer in and to the property seized may
be offered for sale, and the interest must be offered
24 subject to any prior outstanding mortgage,
encumbrances, or other liens in favor of 3rd parties
26 that are valid as against the delinquent taxpayer and
are superior to the lien of the State. All seized
28 properties must be offered for sale "as is" and "where
is" and without recourse against the State. No
30 guarantee or warranty, express or implied, may be made
by the officer offering the property for sale, as to
32 the validity of title, quality, quantity, weight, size
or condition of any of the property or its fitness for
34 any use or purpose. No claim may be considered for
allowance or adjustment or for rescision of the sale
36 based upon failure of the property to conform with any
representation, express or implied.

38 7. Disposition of hard to keep property; notice to owner;
40 public sale. If the assessor determines that any property seized
is liable to perish or become greatly reduced in price or value
42 by keeping, or that the property cannot be kept without great
expense, the assessor shall appraise the value of the property
44 and, if the owner of the property can be readily found, shall
give the owner notice of determination of the appraised value of
46 the property. The property must be returned to the owner if
within such time as may be specified in the notice the owner
48 either pays to the assessor an amount equal to the appraised
value, or gives bond in such form with such sureties, and in such
50 amount as the assessor prescribes, to pay the appraised amount at
such time as the assessor determines to be appropriate in the
52 circumstances.

2 If the owner does not pay the amount or furnish bond in
4 accordance with this section, the assessor shall, as soon as
6 practicable, make public sale of the property in accordance with
8 any rules prescribed by the assessor.

8 8. Junior encumbrances; priority of encumbrances. Priority
10 of encumbrances is governed by this subsection.

10 A. A deed to real property executed pursuant to subsection
12 11 discharges the property from all liens and encumbrances
14 over which the levy had priority.

14 B. The filing of the notice of levy provided in subsection
16 6, paragraph A perfects the lien of the State created under
18 subsection 1, paragraph B with respect to the types of
20 property covered by such a filing under subsection 6,
22 paragraph A. A levy and lien not covered by the filing
24 provisions of subsection 6, paragraph A is perfected by
26 possession by the assessor or by demand upon a 3rd party
28 holding the property under subsection 3, paragraphs A or B,
30 whichever occurs first. The priority of the lien perfected
32 by a filing under subsection 6, paragraph A is determined
34 pursuant to section 175-A as if the notice of levy had been
36 filed as a notice of lien. The lien of any other levy has
38 priority over any interest that is perfected after the lien
40 of the State is perfected by possession or demand.

30 9. Redemption of property. A right of redemption exists
32 according to this subsection.

32 A. Any person whose property has been levied upon and any
34 person having a valid lien upon such property has the right
36 to pay the amount due, together with the expenses of the
38 proceeding, if any, to the assessor at any time prior to the
40 sale of the property. Upon payment, the assessor shall
42 restore the property to that the taxpayer, and all further
44 proceedings in connection with the levy must cease from the
46 time of that payment.

42 B. The owners of any property sold as provided in
44 subsection 6, their heirs, executors or administrators, or
46 any person having any interest in or lien on the sold
48 property, or any person in their behalf, are permitted to
50 redeem the property sold at any time within 90 days after
the sale of the property. The property may be redeemed upon
payment to the assessor, for the use of the purchaser, or
the heirs or assigns of the purchaser, of the amount paid by
the purchaser and interest on that amount at the rate of 20%
per annum.

2 10. Certificates of sale; execution of deeds. The assessor
3 shall give the purchaser of property, sold as provided in
4 subsection 6, a certificate of sale upon payment in full of the
5 purchase price. In the case of real property, the certificate
6 must set forth the real property purchased, for whose taxes the
7 property was sold, the name of the purchaser and the price paid
8 for the property.

9
10 A. In the case of any real property sold as provided in
11 subsection 6 and not redeemed in the manner and within the
12 time provided in subsection 9, the assessor shall execute to
13 the purchaser of the real property, upon surrender of the
14 certificate of sale by the purchaser, a deed of the real
15 property stating the facts set forth in the certificate.

16 B. If real property is declared purchased by the State at a
17 sale pursuant to subsection 6, the assessor shall, at the
18 proper time, execute a deed for the property, and without
19 delay cause the deed to be duly recorded in the proper
20 registry of deeds.

21 11. Effect of certificates of sale and deeds. Certificates
22 of sale and deeds have the following effects.

23
24
25 A. In cases of sale of property, other than real property,
26 pursuant to subsections 6 and 7, the certificate of sale:

27
28 (1) Is prima facie evidence of the right of the
29 assessor to make the sale and conclusive evidence of
30 the regularity of proceedings in making the sale;

31
32 (2) Transfers to the purchaser of all right, title and
33 interest of the delinquent party in and to the property
34 sold subject to the applicable redemption period and
35 subject to all senior liens determined under subsection
36 8, paragraph B. In the case of personal property, the
37 assessor shall provide a final validation stamp
38 following the expiration of the redemption period if
39 the property is not redeemed;

40
41 (3) If the property consists of stocks, constitutes
42 notice, when received, to any corporation, company or
43 association of the transfer, and gives authority to
44 the corporation, company or association to record the
45 transfer in the same manner as if the stocks were
46 transferred or assigned by the party holding them in
47 lieu of any original or prior certificate, which is
48 void, whether or not the certificate is canceled;

49
50 (4) If the subject of sale is securities or other
51 evidences of debt, constitutes a valid receipt to the
52 person holding the securities or evidences of debt.

2 against any person holding or claiming to hold
3 possession of the securities or other evidences of
4 debt; and

6 (5) If the property consists of a motor vehicle,
7 constitutes notice, when received, to the Secretary of
8 State, or to any public official charged with the
9 registration of title to motor vehicles in any other
10 state, of the transfer and gives authority to the
11 Secretary of State or other official to record the
12 transfer in the same manner as if the certificate of
13 title to the motor vehicle were transferred or assigned
14 by the party holding the certificate in lieu of any
15 original or prior certificate, which is void, whether
16 or not the certificate is canceled.

18 B. In the case of the sale of real property pursuant to
19 subsection 6, the deed of sale given pursuant to subsection
20 10, paragraph A, is prima facie evidence of the facts stated
21 in the deed. If the proceedings of the assessor are
22 substantially in accordance with the law, the deed operates
23 as a conveyance of all the right, title and interest the
24 delinquent party had in the real property sold at the time
25 the lien of the State attached to the property, subject to
26 all senior liens determined under subsection 8, paragraph B.

28 C. A certificate of sale of personal property given or a
29 deed to real property executed pursuant to this section
30 discharges the property from all liens, encumbrances and
31 title over which the lien of the State, with respect to
32 which the levy was made, had priority.

34 12. Records of sales and redemption of real property. The
35 assessor shall keep records of all sales of property under
36 subsections 6 and 7 and of all redemptions of that property.
37 Each record must include the tax for which the sale was made, the
38 dates of seizure and sale, the name of the party assessed and all
39 proceedings in making the sale, the amount of expenses, the names
40 of the purchasers and the date of the deed. A copy of a record,
41 or any part of a record, certified by the assessor is evidence in
42 any court of the truth of the facts stated in that record.

44 13. Expenses of levy and sale. The assessor shall
45 determine the expenses to be allowed in all cases of levy and
46 sale. The assessor may pay the expenses from the revenue account
47 intended to benefit by the receipts of the levy.

48 14. Disposition of money realized under this section. Any
49 money realized by proceedings under this section by seizure,
50 surrender under subsection 3, except pursuant to subsection 3,
paragraph C, subparagraph (2), or sale of seized property, or by

2 sale of property redeemed by the State must be applied in the
3 following order of priority:

4 A. Against the expenses of the proceedings under this
5 section;

6 B. The amount, if any, remaining after payment of senior
7 claims and expenses is then applied against the liability
8 for which the levy was made or the sale was conducted; and

9 C. Upon application and satisfactory proof in support of
10 the application, credited or refunded by the assessor to the
11 person or persons legally entitled to any remaining surplus
12 proceeds.

13 15. Actions permitted. Any person, other than the taxpayer
14 whose delinquency occasioned the levy:

15 A. Who claims an interest in property that has wrongfully
16 been levied upon may apply to the assessor for a stay of
17 proceedings under this section at any time before the
18 property has been sold but within 5 days after receiving
19 actual notice of the levy. Any action for a stay is
20 governed by Title 5, section 11004; or

21 B. Who claims pecuniary loss because property was
22 wrongfully levied upon and sold, may bring a civil action
23 against the assessor in the Superior Court. A recovery in
24 such an action may not exceed the proceeds of the sale.

25 Except as provided in this subsection, a suit contesting or
26 restraining the collection of taxes pursuant to this section may
27 not be maintained in any court of this State by any person. Any
28 award must be paid from the revenue account to which the money
29 was originally credited.

30 16. Time for collection of taxes. Taxes must be collected
31 by levy within 6 years after the assessment of the tax, or prior
32 to the expiration of any period of collection agreed upon in
33 writing by the assessor and the taxpayer before the expiration of
34 the 6-year period. The period agreed upon may be extended by
35 subsequent agreements in writing made before the expiration of
36 the period previously agreed upon. Any levy action ordered by
37 the assessor before the expiration of the 6-year period continues
38 beyond the expiration of the 6-year period for a period of 6
39 months from the date such levy is first made or until the
40 liability out of which such levy arose is satisfied or becomes
41 unenforceable, whichever occurs first. When any question
42 relative to the taxes is pending before any agency or court at
43 the end of the 6-year period, the assessor's right to collect any
44 tax due by levy continues until 6 years after the final
45 determination of the question. When any taxpayer files for
46 recovery of property sold under this section, the assessor's right to
47 collect any tax due by levy continues until 6 years after the final
48 determination of the question. When any taxpayer files for
49 recovery of property sold under this section, the assessor's right to
50 collect any tax due by levy continues until 6 years after the final
51 determination of the question. When any taxpayer files for
52 recovery of property sold under this section, the assessor's right to

2 protection under the United States Bankruptcy Code, the
3 assessor's right to collect any tax due by levy continues until 6
4 years after the date of discharge or dismissal of the bankruptcy
5 proceeding.

6 PART F

8 36 MRSA §1861-A is enacted to read:

10 §1861-A. Reporting use tax on individual income tax returns

12 The assessor shall provide that individuals report use tax
13 on their Maine individual income tax returns. Taxpayers are
14 required to attest to the amount of their use tax liability for
15 the period of the tax return. Alternatively, they may elect to
16 report an amount that is .04% of their Maine adjusted gross
17 income. The table amount does not relate to items with a
18 purchase price in excess of \$1,000. Liability arising from such
19 items must be added to the table amount. If a taxpayer fails to
20 attest to an alternate liability on the return, the taxpayer is
21 subject to an increase in income tax liability amounting to .04%
22 of the taxpayer's Maine adjusted gross income. Upon subsequent
23 review, if use tax liability for the period of the return exceeds
24 the amount of liability arising from the return, a credit of the
25 amount of liability arising from the return is allowed subject to
26 the limitation set out in this section. The credit is limited to
27 the amount of liability arising from the return for items with a
28 sales price of \$1,000 or less and may be applied only against a
29 liability determined on review with regard to items with a sales
30 price of \$1,000 or less.

32 PART G

34 Sec. G-1. 36 MRSA §5122, sub-§1, ¶H is enacted to read:

36 H. The absolute value of the amount of any net operating
37 loss arising from tax years beginning on or after January 1,
38 1989, but before January 1, 1990, that arises from an S
39 Corporation with total assets for the year of at least
40 \$1,000,000 and that pursuant to the United States Internal
41 Revenue Code, Section 172, is being carried back for federal
42 income tax purposes to the taxable year by the taxpayer.

44 Sec. G-2. 36 MRSA §5122, sub-§2, ¶E, as amended by PL 1989, c.
45 508, §17 and c. 556, Pt. B, §9, is repealed and the following
46 enacted in its place:

48 E. Pick-up contributions paid to the taxpayer by the Maine
49 State Retirement System that have been previously taxed
50 under this Part:

2 **Sec. G-3. 36 MRSA §5122, sub-§2, ¶F**, as enacted by PL 1989, c.
3 508, §18 and c. 556, Pt. B, §10, is repealed and the following
4 enacted in its place:

5 F. An amount equal to income taxes imposed by this State or
6 any other taxing jurisdiction on the taxpayer that are
7 included in the taxpayer's federal adjusted gross income;

8 **Sec. G-4. 36 MRSA §5122, sub-§2, ¶¶G and H** are enacted to read:

9 G. For income tax years commencing on or after January 1,
10 1989, an amount equal to the total premiums spent for
11 insurance policies for long-term care which have been
12 certified by the Superintendent of Insurance as complying
13 with Title 24-A, chapter 68; and

14 H. For each taxable year subsequent to the year of the loss
15 an amount equal to the absolute value of any net operating
16 loss arising from tax years beginning on or after January 1,
17 1989, but before January 1, 1990, for which federal adjusted
18 gross income was increased in accordance with subsection 1,
19 paragraph H and that pursuant to the United States Internal
20 Revenue Code, Section 172, was carried back for federal
21 income tax purposes, but only to the extent that:

22 (1) Maine net income is not reduced below zero;

23 (2) The taxable year is within the allowable federal
24 period for carry-over; and

25 (3) The amount has not been previously used as a
26 modification pursuant to this subsection.

27 **Sec. G-5. 36 MRSA §5200-A, sub-§1, ¶G**, as enacted by PL 1983,
28 c. 855, §20, is amended to read:

29 G. For a taxable year ending in 1984, the sum of the
30 following portions of the deductions allowed for that
31 taxable year to the taxpayer under the United States
32 Internal Revenue Code, Section 168:

33 (1) 2.5% of the deductions for 3-year property;

34 (2) 7.5% of the deductions for 5-year property;

35 (3) 12.5% of the deductions for 10-year property; and

36 (4) 20% of the deductions for 15-year property; and

Sec. G-6. 36 MRSA §5200-A, sub-§1, ¶H is enacted to read:

H. The absolute value of the amount of any net operating loss arising from tax years beginning on or after January 1, 1989 but before January 1, 1990 and that, pursuant to the United States Internal Revenue Code, Section 172, is being carried back for federal income tax purposes to the taxable year by the taxpayer.

Sec. G-7. 36 MRSA §5200-A, sub-§2, ¶F, as enacted by PL 1987, c. 841, §5, is amended to read:

F. Income which this State is prohibited from taxing under the Constitution of Maine or the United States Constitution, provided that the amount subtracted shall must be decreased by any expenses incurred in production of that income to the extent that these expenses are deductible in determining federal taxable income; and

Sec. G-8. 36 MRSA §5200-A, sub-§2, ¶G, as enacted by PL 1987, c. 841, §5, is amended to read:

G. Fifty percent of the apportionable dividend income which the taxpayer received during the taxable year from an affiliated corporation which that is not included with the taxpayer in a Maine combined report, except that this modification shall must be phased in over 5 years in accordance with the following schedule:

Taxable year beginning in:	Subtractable dividend income:
1989	10%
1990	20%
1991	30%
1992	40%
1993 or thereafter	50%

Sec. G-9. 36 MRSA §5200-A, sub-§2, ¶H is enacted to read:

H. For each taxable year subsequent to the year of the loss, an amount equal to the absolute value of any net operating loss arising from tax years beginning on or after January 1, 1989 but before January 1, 1990 and that, pursuant to the United States Internal Revenue Code, Section 172, was carried back for federal income tax purposes, but only to the extent that:

(1) Maine net income is not reduced below zero;

(2) The taxable year is within the allowable federal period for carry-over; and

COMMITTEE AMENDMENT "A" to H.P. 1731, L.D. 2390

2 Part B appropriates funds needed to implement and enforce
the Tax Amnesty Program.

4 Part C allows the State Tax Assessor to deny renewal or
6 reissuance of any license or operating permit for nonpayment of
taxes.

8 Part D changes the class of crime for violation of tax laws
by prior offenders from Class D to Class C.

10 Part E repeals and replaces existing levy provisions.

12 Part F requires individuals to report use tax liability on
14 their income tax forms.

16 Part G eliminates net operating loss carry-backs for one
18 year.

20 Part H adds lessors to the list of organizations responsible
for collection of sales taxes.

Reported by the Majority of the Committee on Taxation
Reproduced and distributed under the direction of the Clerk of the
House
4/6/90 (Filing No. H-1093)