

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2390

H.P. 1731

House of Representatives, March 1, 1990

Reference to the Committee on Taxation suggested and ordered printed.

Ed Pert

EDWIN H. PERT, Clerk

Presented by Representative WHITCOMB of Waldo.

Cosponsored by Senator EMERSON of Penobscot and Representative HEPBURN of Skowhegan.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

**An Act to Provide Tax Amnesty and Necessary Administrative Support
to the Bureau of Taxation.**



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

4 PART A

6 36 MRSA c. 913 is enacted to read:

8 CHAPTER 913

10 TAX AMNESTY

12 §6551. Maine Tax Amnesty Program

14 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.

20 §6552. Definitions

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

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

26 2. Taxpayer. "Taxpayer" means any individual, firm,
partnership, association, society, club, corporation, estate,
trust, business trust, receiver, assignee, or any other group or
combination acting as a unit, a taxable entity, the State or
Federal Government, or any political subdivision or agency of
government required to file a return under this Title or to pay,
withhold and pay over, or collect and pay over any tax imposed by
this Title.

30 §6553. Administration

32 The assessor shall administer the Maine Tax Amnesty
Program. The amnesty program applies to tax liabilities
delinquent as of April 17, 1990, including tax on returns not
filed, tax liabilities according to the records of the bureau as
of April 17, 1990, or tax liabilities not reported or established
but delinquent as of April 17, 1990. A taxpayer may participate
in the amnesty program whether or not the taxpayer is under audit
and without regard to whether the amount due is subject to a
pending administrative or judicial proceeding. A taxpayer may
participate in the amnesty program to the extent of the
uncontested portion of an assessed liability. Participation in
the program is conditioned upon the taxpayer's agreement that the
right to protest or pursue an administrative or judicial
proceeding with regard to returns filed under the amnesty program

2 or to claim any refund of money paid under the amnesty program is
3 barred. A taxpayer with a tax liability within the limitations
4 of this chapter is absolved from criminal or civil prosecution or
5 civil penalties, plus 1/2 of the interest associated with any
6 such liability, if the taxpayer:

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

10 2. Tax and interest paid. Pays all tax and interest as
11 determined on the amnesty tax return before the end of the
12 amnesty period or enters into a payment plan approved by the
13 assessor;

14 3. No investigation. Is not currently under investigation
15 for filing a fraudulent return or failing to file a return with
16 the intent to evade taxation; and

18 4. Illegal activities. Is not reporting taxes arising from
19 otherwise illegal activities.

22 **§6554. Amnesty period**

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

26 **§6555. Amnesty return**

28 The assessor shall prepare and make available the amnesty
29 return. The return and associated guidelines prepared by the
30 assessor, which govern participation in the Maine Tax Amnesty
31 Program, are exempt from the Maine Administrative Procedure Act.
32 The application requires the approval of the assessor. The
33 assessor may deny any application not consistent with the Maine
34 Tax Amnesty Program.

36 **§6556. Payment plan**

38 The assessor may enter into an installment agreement in
39 cases of severe hardship in lieu of the complete payment of all
40 tax and interest as determined on the amnesty return. In such
41 cases, 25% of the total liability must be paid with the amnesty
42 return and the balance must be paid in not more than 6 monthly
43 installments. Failure of the taxpayer to make the agreed
44 payments in a timely fashion voids the application of the amnesty
45 program to that taxpayer. All such agreements and payments must
46 include interest at the rate of 12% per annum on the tax
47 outstanding.

50 **PART B**

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

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

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

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

16 **1990-91**

18 **FINANCE, DEPARTMENT OF**

20 **Bureau of Taxation**

22 Positions (7)
24 Personal Services \$210,000
26 All Other 45,000
28 Capital Expenditures 50,000

30 Provides funds to hire and support 7
32 additional compliance personnel to generate
34 an additional \$2,000,000 in fiscal year
36 1990-91.

38 All Other \$150,000

40 Provides funds to reimburse the Office of
42 the Attorney General for the services of 3
44 attorneys or paralegal professionals in the
46 enforcement of the State's tax laws. This
48 is not intended to substitute for the
resources currently allocated to serve in
matters relating to the needs of the Bureau
of Taxation.

50 Positions - Legislative Count (9)
52 Personal Services \$490,000
54 All Other 1,195,000
56 Capital Expenditures 67,000

58 Provides funds to upgrade the Bureau of
60 Taxation's automated information resources.
62 It funds the first year of Maine Automated
64 Tax System project.

66 Positions - Legislative Count (2)
68 Personal Services \$80,000
70 All Other 205,000

2	Capital Expenditures	15,000
4	Provides funds for staff and resources to manage the Maine Tax Amnesty Program.	
6	Positions - Legislative Count	(2)
8	Personal Services	\$30,000
10	All Other	10,000
12	Capital Expenditures	10,000
14	Provides funds for additional program toll-free telephone assistance relative to the Maine Tax Amnesty Program. The 2 positions are for 6 months during the amnesty period.	
16	DEPARTMENT OF FINANCE	
18	TOTAL	<u>\$2,557,000</u>

PART C

22 **36 MRSA §175, sub-§§2 and 3**, as repealed and replaced by PL
24 1987, c. 402, Pt. A, §178, are amended to read:

26 **2. Failure to file or pay taxes; denial of license or**
28 **renewal.** If the State Tax Assessor determines, from the
30 information formulated under subsection 1 or otherwise, that any
32 person who holds a state-issued license or certificate of
34 authority ~~issued by that agency~~ has neglected or refused either
36 to file any returns at the time required under this Title or to
38 pay any tax liability due under this Title which has ~~become final~~
40 been demanded, the State Tax Assessor shall notify the person in
42 writing that refusal to file the required tax return or to pay
44 the overdue tax liability may result in loss of license or
46 certificate of authority. If the person continues for a period in
48 excess of 30 days from notice of possible denial of renewal or
50 reissuance of a license or certificate of authority to fail to
file or show reason why he the person is not required to file or
if the person continues not to pay, the State Tax Assessor shall
notify the person in writing of his the determination to prevent
renewal or reissuance of the license or certificate of authority
by the issuing agency. A review of this determination is
available by requesting a petition for reconsideration under
section 151, subject to appeal to the Superior Court in
accordance with the Maine Administrative Procedure Act, Title 5,
chapter 375. Either by failure to proceed to the next step of
appeal or by exhaustion of the steps of appeal, the determination
of the State Tax Assessor's right to prevent renewal or
reissuance becomes final unless otherwise determined by appeal.

52 **3. Refusal of license or certificate by licensing agency.**
Any issuing agency which that is notified by the State Tax

2 Assessor of his the assessor's finalized determination to prevent
4 renewal or reissuance of a license or certificate of authority
6 under subsection 2 shall refuse to reissue, renew or otherwise
8 extend that license or certificate of authority until the agency
receives a certificate issued by the State Tax Assessor that the
person is in good standing with respect to any and all returns
due or with respect to any tax due as of the date of issuance of
the certificate.

10 PART D

12 **Sec. D-1. 36 MRSA §184**, as enacted by PL 1985, c. 691, §6, is
amended to read:

14 **§184. Criminal offenses**

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

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

38 **§5330. Attempts to evade or defeat tax**

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

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Sec. E-2. 36 MRSA §176-A is enacted to read:

§176-A. Levy upon property

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Delinquent," when used to refer to a tax, means a tax liability reported by a taxpayer or a tax assessed by the assessor that is not paid by its due date and to which no further administrative or judicial review is available pursuant to section 151. The term "delinquent" may also refer to a taxpayer liable for delinquent taxes.

B. "Levy" means an administrative power to collect delinquent taxes through the means prescribed by this section, or the exercise of that power. The power to levy includes the power of distraint by any lawful means, the power to sell the property and the power to release the levy when it is no longer necessary or appropriate to further the process of collecting delinquent taxes. Exercise of the levy power creates a lien and makes the assessor a judgment creditor.

C. "Property" means any right, title and interest held in property by a delinquent taxpayer, whether real or personal, tangible or intangible, located within this State.

D. "Service" must be made in a manner prescribed in section 111, subsection 2, except on persons who have consented to less formal means of notification.

2. Levy upon property for payment of delinquent tax. The procedure for the levy upon property for payment of delinquent tax is as follows.

A. Upon determining that any taxpayer is delinquent, the assessor may cause a demand letter, complying in all respects with section 171, to be served on the taxpayer. The demand letter must expressly warn the taxpayer that, pursuant to section 151, no further administrative or judicial review of the tax delinquency is available and that the assessor may levy upon the taxpayer's property in accordance with the provisions of this section unless full payment of the delinquent amount is received within 10 days after the taxpayer receives the demand letter.

B. If any person liable to pay any delinquent tax neglects or refuses to pay that tax within 10 days after demand, it is lawful for the assessor to collect the tax and such further sum as is sufficient to cover the expenses of the

2 levy, by levy upon all property belonging to that person
4 liable to levy. If the assessor makes a finding that the
6 collection of the tax is in jeopardy, notice and demand for
8 immediate payment of the tax may be made by the assessor
10 and, upon failure or refusal to pay that tax, collection of
12 the tax by levy is lawful without regard to the 10-day
14 period provided in this section.

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

28 D. The effect of a levy on salary or wages payable to or
30 received by a taxpayer is continuous from the date the levy
32 is first made until the liability from which the levy arose
34 is satisfied. The effect of a levy on any other property or
36 rights to property remains in effect for 6 months from the
38 date the levy is first made until the liability from which
40 the levy arose is satisfied or becomes unenforceable due to
42 lapse of time. With respect to a levy described in this
44 subsection, the assessor shall promptly release the levy
46 when the liability from which the levy arose is satisfied or
48 becomes unenforceable due to lapse of time and shall
50 promptly notify the person upon whom the levy is made that
the levy has been released.

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. 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.

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

2 (1) A levy on an organization with respect to a life
4 insurance or endowment contract issued by that
6 organization, without necessity for the surrender of
8 the contract document, constitutes a demand by the
10 assessor for payment of the amount described in
12 subparagraph (2) and the exercise of the right of the
14 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
must include a certification by the assessor that a
copy of the notice has been mailed to the person
against whom the tax is assessed at that person's last
known address.

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

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

36 C. Any person who fails or refuses to surrender any
38 property or rights to property, subject to levy, upon demand
by the assessor:

40 (1) Is liable in person and estate to the State in a
42 sum equal to the value of the property not so
44 surrendered, but not exceeding the amount of taxes for
46 the collection of which the levy has been made,
48 together with costs and interests on the sum from the
date of the levy. Any amount, other than costs,
recovered under this paragraph must be credited against
the tax liability for the collection of which the levy
was made; and

50 (2) Without reasonable cause, is liable for a penalty
52 equal to 50% of the amount recoverable under
subparagraph (1). A part of the penalty may not be
credited against the tax liability for the collection

2 of which the levy was made. It is lawful for the
4 assessor to collect the liability as determined by this
paragraph by levy upon the person's property in
accordance with the provisions of this section.

6 D. Any person in possession of, or obligated with respect
8 to, property subject to levy upon which a levy has been
made, who, upon demand by the assessor, surrenders that
10 property or rights to that property, or discharges the
12 obligation to the assessor, or who pays a liability under
paragraph C, subparagraph (1) is discharged from any
14 obligation or liability to the delinquent taxpayer with
respect to the property arising from the surrender or
16 payment. In the case of a levy satisfied pursuant to
paragraph B, the organization is discharged from any
obligation or liability to any beneficiary arising from the
surrender or payment.

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

26 5. Exempt property. This subsection governs property
28 exempt from levy.

30 A. The following property is exempt from levy:

32 (1) Items of wearing apparel and school books
34 necessary for the taxpayer or the members of the
taxpayer's family;

36 (2) If the taxpayer is the head of a family, the fuel,
38 provisions, furniture and personal effects in the
taxpayer's household, arms for personal use, livestock
40 and poultry of the taxpayer, the total value of which
does not exceed \$1,500;

42 (3) Books and tools necessary for the trade, business
44 or profession of the taxpayer, the value of which, in
the aggregate, does not exceed \$1,000;

46 (4) Any amount payable to the taxpayer with respect to
48 the taxpayer's unemployment, including any portion
payable with respect to dependents, under an
50 unemployment compensation law of the United States or
any state;

2 (5) Mail, addressed to any person, that has not been
3 delivered to the addressee;

4 (6) Annuity or pension payments under the federal
5 Railroad Retirement Act of 1974, 45 United States Code,
6 Section 231, et seq., benefits under the federal
7 Railroad Unemployment Insurance Act, 45 United States
8 Code, Section 351, special pension payments received by
9 a person whose name has been entered on the Army, Navy,
10 Air Force and Coast Guard Medal of Honor Roll, 38
11 United States Code, Section 562 (1982), and annuities
12 based on retired or retainer pay under 10 United States
13 Code, Chapter 73 (1982);

14 (7) If the taxpayer is required by judgment of a court
15 of competent jurisdiction, entered prior to the date of
16 levy, to contribute to the support of minor children,
17 as much of the taxpayer's salary, wages or other income
18 as is necessary to comply with such a judgment; and

19 (8) Any amount payable to or received by a taxpayer as
20 wages or salary for personal services, during any
21 period, to the extent that the total of the amounts
22 payable to or received by the taxpayer during that
23 period does not exceed the applicable exempt amount
24 determined under paragraph D.

25 B. The officer seizing property of the type described in
26 paragraph A shall appraise and set aside to the owner the
27 amount of the property declared to be exempt. If the
28 taxpayer objects at the time of the seizure to the valuation
29 fixed by the officer making the seizure, the assessor shall
30 summon 3 disinterested individuals who shall make the
31 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.

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

2 taxpayer's employer immediately upon discharge of the
3 delinquency that the levy has been discontinued.

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

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

20 (1) In the case of personal property, an account of
21 the property seized; and

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

24 B. The assessor, as soon as practicable after the seizure
25 of the property, shall give notice to the owner or possessor
26 in the manner prescribed in paragraph A and cause a
27 notification to be published in a newspaper of general
28 circulation within the county where the seizure is made, or,
29 if there is no such newspaper, post the notice at the city
30 or town hall nearest the place where the seizure is made and
31 in not less than 2 other public places. In the case of real
32 property, the notice must be served on all persons holding
33 an interest of record, including, without limitation,
34 recorded leases and security interest of all types, in the
35 property and claiming through an interest referenced in the
36 instrument under which the taxpayer claims, as reflected at
37 the time the notice of levy is recorded by the indices of
38 the registry of deeds in the county where the property is
39 located. The notice must specify the property to be sold,
40 subject to the liabilities of prior encumbrances, if any,
41 and the time, place, manner and conditions of the sale. If
42 levy is made without regard to the 10-day period provided in
43 subsection 2, public notice of sale of the property seized
44 may not be made within the 10-day period unless subsection 7
45 applies. It is a Class E crime to intentionally remove or
46 deface the posted notice of sale prior to the scheduled sale
47 date, unless the property has been redeemed or the sale is
48 for some other reason canceled. The assessor or any law
49 enforcement officer who intentionally removes or defaces
50 the posted notice of sale is guilty of a Class E crime.

2 enforcement officer may enter onto the land if necessary to
3 carry out the purposes of this section.

4 C. If any property liable to levy is not divisible to
5 enable the assessor by sale of a part of the property to
6 raise the whole amount of the tax and expenses, the whole
7 property must be sold.

8
9 D. The time of sale may be not less than 10 days nor more
10 than 40 days from the time of giving public notice under
11 paragraph B. The sale may be adjourned from time to time
12 but adjournments may not be for a period to exceed a total
13 of 30 days. Notice of any adjournments of the sale must be
14 posted in the public places within the county where the
15 notice prescribed in paragraph B was posted.

16
17 E. Before the sale, the assessor shall determine a minimum
18 price for which the property must be sold. If no person
19 offers the amount of the minimum price for the property, the
20 property is declared to be purchased at that price for the
21 State; otherwise the property is declared to be sold to the
22 highest bidder. In determining the minimum price, the
23 assessor shall take into account the expense of making the
24 levy and sale.

25 (1) The assessor may by rule prescribe the manner and
26 other conditions of the sale of property seized by levy
27 or purchased by the sale.

28
29 (2) If payment in full is required at the time of
30 acceptance of a bid and is not paid at that time, the
31 assessor shall forthwith proceed to again sell the
32 property in the manner provided in this subsection. If
33 the conditions of the sale permit part of the payment
34 to be deferred, and if a deferred part is not paid
35 within the prescribed period:

36
37 (a) Suit may be instituted against the purchaser
38 for the purchase price or the part of the price
39 that has not been paid, together with interest
40 from the date of the sale; or

41
42 (b) In the discretion of the assessor, the sale
43 may be declared by the assessor to be void for
44 failure to make full payment of the purchase price
45 and the property may again be advertised and sold
46 as provided in this subsection. In the event of a
47 readvertisement and sale, any new purchaser
48 receives the property, or rights to the property,
49 free and clear of any claim or right to the former
50 defaulting purchaser, of any nature whatsoever,

2 and the amount paid on the bid price by the
3 defaulting purchaser is forfeited.

4 **7. Disposition of hard to keep property; notice to owner;**
5 **public sale.** If the assessor determines that any property seized
6 is liable to perish or become greatly reduced in price or value
7 by keeping, or that the property cannot be kept without great
8 expense, the assessor shall appraise the value of the property
9 and, if the owner of the property can be readily found, shall
10 give the owner notice of determination of the appraised value of
11 the property. The property must be returned to the owner if
12 within such time as may be specified in the notice the owner
13 either pays to the assessor an amount equal to the appraised
14 value, or gives bond in such form with such sureties, and in such
15 amount as the assessor prescribes, to pay the appraised amount at
16 such time as the assessor determines to be appropriate in the
17 circumstances.

18 If the owner does not pay the amount or furnish bond in
19 accordance with this section, the assessor shall, as soon as
20 practicable, make public sale of the property in accordance with
21 any rules prescribed by the assessor.

22 **8. Junior encumbrances.** A deed to real property executed
23 pursuant to subsection 11 discharges the property from all liens
24 and encumbrances over which the levy had priority.

25 **9. Redemption of property.** A right of redemption exists
26 according to this subsection.

27 **A.** Any person whose property has been levied upon has the
28 right to pay the amount due, together with the expenses of
29 the proceeding, if any, to the assessor at any time prior to
30 the sale of the property. Upon payment, the assessor shall
31 restore the property to that person, and all further
32 proceedings in connection with the levy must cease from the
33 time of that payment.

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

44 **10. Certificates of sale; execution of deeds.** The assessor
45 shall give the purchaser of property, sold as provided in
46 subsection 6, a certificate of sale upon payment in full of the
47 amount due.

2 purchase price. In the case of real property, the certificate
3 must set forth the real property purchased, for whose taxes the
4 property was sold, the name of the purchaser and the price paid
5 for the property.

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

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

17 11. Effect of certificates of sale and deeds. Certificates
18 of sale and deeds have the following effects.

19 A. In cases of sale of property, other than real property,
20 pursuant to subsections 6 and 7, the certificate of sale:

21 (1) Is prima facie evidence of the right of the
22 assessor to make the sale and conclusive evidence of
23 the regularity of proceedings in making the sale;

24 (2) Transfers to the purchaser all right, title and
25 interest of the delinquent party in and to the property
26 sold subject to the 90-day redemption period. In the
27 case of personal property, the assessor shall provide a
28 final validation stamp following the expiration of the
29 redemption period if the property is not redeemed;

30 (3) If the property consists of stocks, constitutes
31 notice, when received, to any corporation, company or
32 association of the transfer, and gives authority to
33 the corporation, company or association to record the
34 transfer in the same manner as if the stocks were
35 transferred or assigned by the party holding them in
36 lieu of any original or prior certificate, which is
37 void, whether or not the certificate is canceled;

38 (4) If the subject of sale is securities or other
39 evidences of debt, constitutes a valid receipt to the
40 person holding the securities or evidences of debt,
41 against any person holding or claiming to hold
42 possession of the securities or other evidences of
43 debt; and

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

14 B. In the case of the sale of real property pursuant to
16 subsection 6, the deed of sale given pursuant to subsection
18 10 is prima facie evidence of the facts stated in the deed.
20 If the proceedings of the assessor are substantially in
 accordance with the law, the deed operates as a conveyance
 of all the right, title and interest the delinquent party
 had in the real property sold at the time the lien of the
 State attached to the property.

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

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

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

44 14. Disposition of money realized under this section. Any
46 money realized by proceedings under this section by seizure,
48 surrender under subsection 3, except pursuant to subsection 3,
 paragraph C, subparagraph (2), or sale of seized property, or by
 sale of property redeemed by the State must be applied in the
 following order of priority:

50 A. Against the expenses of satisfying senior claims against
52 the property, then against the expenses of the proceedings
 under this section;

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

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

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

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

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

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

32 16. Time for collection of taxes. Taxes must be collected
34 by levy within 6 years after the assessment of the tax, or prior
36 to the expiration of any period of collection agreed upon in
38 writing by the assessor and the taxpayer before the expiration of
40 the 6-year period. The period agreed upon may be extended by
42 subsequent agreements in writing made before the expiration of
44 the period previously agreed upon. Any levy action ordered by
46 the assessor before the expiration of the 6-year period continues
48 beyond the expiration of the 6-year period in accordance with
 subsection 2, paragraph D. When any question relative to the
 taxes is pending before any agency or court at the end of the
 6-year period, the assessor's right to collect any tax due by
 levy continues until 6 years after the final determination of the
 question. When any taxpayer files for protection under the
 United States Bankruptcy Code, the assessor's right to collect
 any tax due by levy continues until 6 years after the date of
 discharge or dismissal of the bankruptcy proceeding.

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PART F

2 36 MRSA §1861-A is enacted to read:

4 §1861-A. Reporting use tax on individual income tax returns

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

26 PART G

28 **Sec. G-1. 36 MRSA §5122, sub-§1, ¶D**, as amended by PL 1983, c.
30 855, §15, is repealed and the following enacted in its place:

32 D. The absolute value of the amount of any net operating
loss pursuant to the Code, Section 172, that is being
carried back to the taxable year by the taxpayer;

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

40 E. Pick-up contributions paid to the taxpayer by the Maine
State Retirement System that have been previously taxed
under this Part;

42 **Sec. G-3. 36 MRSA 5122, sub-§2, ¶F**, as enacted by PL 1989, c.
44 508, §18 and c. 556, Pt. B, §10, is repealed and the following
46 enacted in its place:

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

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

2 G. For income tax years commencing on or after January 1,
4 1989, an amount equal to the total premiums spent for
6 insurance policies for long-term care which have been
certified by the Superintendent of Insurance as complying
with Title 24-A, chapter 68; and

8 H. For any taxable year subsequent to the year of the loss,
10 an amount equal to the absolute value of any net operating
12 loss that, pursuant to the Code, Section 172, was carried
14 back, but only to the extent that Maine taxable income is
16 not reduced below zero, that the taxable year is within the
allowable federal period for carryover and that the amount
has not been previously used as a modification pursuant to
this subsection.

18 **Sec. G-5. 36 MRSA §5200-A, sub-§1, ¶B,** as amended by PL 1987,
20 c. 504, §18, is repealed and the following enacted in its place:

22 B. The absolute value of the amount of any net operating
24 loss pursuant to the Code, Section 172, that is being
carried back to the taxable year by the taxpayer;

26 **Sec. G-6. 36 MRSA §5200-A, sub-§2, ¶F,** as enacted by PL 1987,
c. 841, §5, is amended to read:

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

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

38 G. Fifty percent of the apportionable dividend income which
40 the taxpayer received during the taxable year from an
42 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%

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; and

Sec. G-8. 36 MRSA §5200-A, sub-§2, ¶H is enacted to read:

H. For any taxable year subsequent to the year of the loss, an amount equal to the absolute value of any net operating loss that, pursuant to the Code, Section 172, was carried back, but only to the extent that Maine taxable income is not reduced below zero, that the taxable year is within the allowable federal period for carryover and that the amount has not been previously used as a modification pursuant to this subsection.

Sec. G-9. 36 MRSA §5217, sub-§3, as repealed and replaced by PL 1987, c. 769, Pt. A, §159, is amended to read:

3. Carry-over. The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the amount of tax otherwise due under this section Part. Any unused credit may be carried over to the following year or years for a period not to exceed 15 years ~~or it may be carried back for a period not to exceed 3 years.~~

Sec. G-10. 36 MRSA §5217, sub-§4 is enacted to read:

4. Carry-back. There may be no carry-back to prior years of the amount of credit allowable under this section.

Sec. G-11. 36 MRSA §5219-C, sub-§4, as enacted by PL 1989, c. 585, Pt. C, §17, is amended to read:

4. Carry-over. The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the amount of tax otherwise due under this section Part. Any unused credit may be carried over to the following year or years for a period not to exceed 15 years ~~or may be carried back for a period not to exceed 3 years.~~

Sec. G-12. 36 MRSA §5219-C, sub-§6 is enacted to read:

6. Carry-back. There may be no carry-back to prior years of the amount of credit allowable under this section.

Sec. G-13. 36 MRSA §5278, sub-§5, ¶B, as amended by PL 1989, c. 530, §3, is repealed.

Sec. G-14. Application. This Part applies to net operating loss adjustments arising from tax years beginning on or after January 1, 1989.

PART H

36 MRSa §1754, sub-§§10 and 11 are enacted to read:

10. Solicitation of consumer market. Every seller of tangible personal property or taxable services who engages in regular or systematic solicitation of a consumer market in this State by the distribution of catalogs, periodicals, advertising fliers or other advertising; by means of print, radio or television media; or by mail, telegraphy, telephone, computer data base, cable, optic, microwave or other communication system; and

11. Lessors. Every lessor engaging in the leasing of tangible personal property that is located in this State who does not maintain a place of business in this State and who makes retail sales to purchasers from this State.

FISCAL NOTE

It is estimated that Part A and Parts C to E, establishing the Tax Amnesty Program, will generate an additional \$17,600,000 in collections in fiscal year 1990-91. Additionally, the revenue base will be increased so that an ongoing increase in revenue will be expected.

Part B requires an appropriation of about \$2,600,000 in fiscal year 1990-91. Thus, the net impact of Parts A to G of this bill in fiscal year 1990-91 is an estimated increase of \$15,000,000 in tax collections.

It is estimated that Part F will increase use tax revenue by \$4,000,000 in fiscal year 1990-91. The General Fund will receive 94.9% of the amount while the Local Government Fund will receive 5.1%.

It is estimated that Part G, which provides for the elimination of net operating loss carry-backs and carry-back credits will increase income tax revenue by \$1,000,000 in fiscal year 1989-90 and \$4,000,000 in fiscal year 1990-91. Of these amounts, 94.9% will accrue to the General Fund and 5.1% will accrue to the Local Government Fund.

It is estimated that Part H will increase sales tax revenue by \$2,000,000 in fiscal year 1990-91. Of this amount 94.9% will accrue to the General Fund and 5.1% will accrue to the Local Government Fund.

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STATEMENT OF FACT

4 Part A of this bill provides for the 2-month Maine Tax
6 Amnesty Program during November and December of 1990. Taxpayers
8 who pay their liability in full during this period will enjoy a
 waiver of penalties and 1/2 the interest on taxes paid in full.
 There is also a payment plan available for up to 6 months in the
 case of severe financial hardships.

10 Part B provides for necessary tools to carry out and
12 administer the accounts arising from amnesty. It also provides
14 for better enforcement after amnesty.

16 Part C is a component of the package of increased sanctions
18 associated with the amnesty program. It will allow the Bureau of
 Taxation to prevent the reissuance or renewal of state-issued
 licenses to taxpayers who refuse to pay overdue state taxes.

20 Part D is a component of the package of increased sanctions
22 associated with the amnesty program. It provides that a repeat
24 tax law offender is subject to the penalties associated with a
26 felony crime. A Class D crime is punishable by less than one
 year of imprisonment and a fine of no more than \$5,000. A Class
 C crime is punishable by no more than 5 years of imprisonment and
 a fine of no more than \$10,000.

28 Part E is a component of the package of increased sanctions
30 associated with the amnesty program. It accomplishes the
 following.

32 1. Current levy applies to cash, wages and rights to
34 receive money. This Part extends the levy to real and personal
 property as well.

36 2. This Part provides a means for the State to dispose of
38 the property to the highest bidder. The sale will require
 monetary satisfaction of all prior secured interest.

40 3. Exempt from the levy will be certain items of personal
42 property such as clothing and furniture and household effects up
44 to \$1,500 in value. Also exempt are books and tools of trade up
 to the value of \$1,000.

46 4. This Part provides a redemption period of 90 days after
48 the sale during which the taxpayer can reclaim the property by
 paying the liability.

50 5. This Part requires that the State provide certificates
52 of sale and deeds to real property transferring title to the
 purchaser of the levied property.

2 6. This Part places a statute of limitations of 6 years
during which the levy is available for enforcing collection of a
tax debt. There is currently no statute of limitations.

4
6 7. This Part, as with the existing law, requires that the
tax debt be final and that the taxpayer be warned of the action
by certified mail.

8
10 Part F requires individual income tax payers to declare
their sales tax liability on their individual income tax
12 returns. If they fail to attest to their actual liability an
amount equal to .04% of the Maine adjusted gross income will be
14 assessed. The percentage amount would be allowed as a credit
against only purchases of items with a sales price of \$1,000 and
16 less.

18 Part G:

20 1. Provides for federal net operating loss carry-backs
accruing to individual income tax payers to be added back to
22 income, in effect eliminating them. Additionally, the amounts
disallowed as carry-backs are allowed as carry-forward amounts
within the limitations for federal carry-forward adjustments;

24
26 2. Provides for the same treatment of corporate income tax
net operating loss carry-backs as is applied to individuals;

28 3. Eliminates carry-back provisions from the
employer-assisted day care income tax credit;

30
32 4. Eliminates carry-back provisions from the solid waste
reduction investment income tax credit; and

34 5. Eliminates a net operating loss carry-back provision in
the income tax code.

36
38 Part H contains a provision similar to that recently enacted
in several other states intended to encourage businesses that
40 regularly solicit customers in this State to collect Maine sales
tax. This Part also provides a requirement for lessors of
42 tangible personal property who do not maintain a place of
business in this State, but have tangible personal property
44 located here, to register with the State Tax Assessor and to
collect and report use tax on their retail sales in this State.
46 Presently, lessors of tangible personal property in this State
who do not maintain a place of business in this State are not
48 required to collect the Maine use tax on their retail sales of
tangible personal property to purchasers in this State. For
50 example, in the case of a lease with option to purchase, the
out-of-state lessor is required to report use tax on the use of
the equipment when leased, but is not required to collect and

2 report the use tax on the sale when the option to purchase is exercised.