

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 689, L.D. 988, Bill, "An Act to Improve Collections of Income Tax Due Upon the Sale of Real Property"

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

Sec. 1. 36 MRSA §4641-D, first ¶, as amended by PL 1989, c. 131, is further amended to read:

Any deed, except as provided in this section, shall must, when offered for recording, be accompanied by a statement or declaration prepared in duplicate and signed, subject to the penalties of perjury, by the parties to the transaction or their authorized representatives, declaring the consideration for the property thereby transferred and indicating the taxpayer identification numbers of the grantor and grantee. The statement or declaration shall must include evidence of compliance with section 5250-A and reference to the appropriate tax map and parcel number unless no tax map exists that includes that property, in which event the declaration shall must indicate that no appropriate tax map exists. The exceptions to the foregoing are the following:

Sec. 2. 36 MRSA §5250-A is enacted to read:

§5250-A. Withholding on sales of real estate

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

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2 A. "Consideration" means the total price or amount paid, or
4 required to be paid, for real property valued in money,
 whether received in money or otherwise and includes the
6 amount of any mortgage, lien or encumbrance on the real
 property.

8 B. "Real estate escrow person" means any of the following
10 persons involved in a real estate transaction in the
 following order of priority:

12 (1) The person, including any attorney, escrow company
14 or title company, responsible for closing the
 transaction;

16 (2) The mortgage lender;

18 (3) The seller's broker;

20 (4) The buyer's broker; and

22 (5) Any other person who receives and disburses the
24 consideration or value for the interest or property
 conveyed.

26 C. "Resident," when used in reference to an individual,
28 estate or trust, means an individual, estate or trust that
 has established a domicile in the State as of the date of
30 transfer of the Maine real property, or that was a resident
 for purposes of the previous income tax year, unless the
32 individual, estate or trust has established a domicile
 outside of the State as of the date of transfer of the Maine
34 real property. "Resident," when used in reference to a
 corporation, means a corporation that, as of the date of
36 transfer of the Maine real property, is incorporated in the
 State or maintains a permanent place of business in the
 State.

38 2. Withholding required. Every buyer of real property
40 located in Maine must withhold a withholding tax equal to 2 1/2%
 of the consideration. The withholding required by this section
42 must be transmitted to the State Tax Assessor within 30 days of
 the date of transfer of the property unless the State Tax
44 Assessor authorizes the buyer to release the amount withheld, or
 a portion of it, to the seller. Any buyer who fails to withhold
46 the tax is personally liable for the tax.

48 3. Exceptions. A buyer is not required to withhold the tax
50 imposed by this section if:

2 A. The seller furnishes to the buyer a certificate by the
3 seller stating, under penalty of perjury, that as of the
4 date of transfer the seller is a resident of the State;

5 B. The seller or the buyer has received from the State Tax
6 Assessor a certificate stating that no tax is due on the
7 gain from the transfer or that the seller has provided
8 adequate security to cover the liability;

9 C. The consideration for the property is less than \$50,000;
10 or

11 D. Written notification of the withholding requirements of
12 this section has not been provided to the buyer.

13 4. Reduced amount. At the request of the buyer or the
14 seller, the State Tax Assessor may prescribe a reduced amount to
15 be withheld under this section if the State Tax Assessor
16 determines that the reduced amount will not jeopardize the
17 collection of the tax imposed by this Part.

18 5. False certificate. If a buyer has actual knowledge that
19 a certificate furnished under subsection 3, paragraph B is false
20 and the buyer fails to withhold the prescribed amount, the buyer
21 is liable for the amount that should have been withheld and any
22 applicable interest and penalty.

23 6. Joint sellers. In the case of joint sellers, if any of
24 the exceptions listed in subsection 3 apply to some but not all
25 of the sellers, the buyer must withhold and remit the tax as if
26 none of the sellers were entitled to an exception, unless at the
27 time of closing the buyer receives a statement signed by all the
28 sellers allocating the gross proceeds among the sellers. In such
29 cases the buyer must allocate the withholding tax according to
30 the proportions set out in that statement, account separately for
31 the amount withheld from each seller and apply any applicable
32 exceptions in subsection 3 to each seller.

33 7. Joint buyers. In the case of joint buyers, the
34 obligations and tax imposed by this section apply jointly and
35 severally to each buyer.

36 8. Fee for withholding. It is unlawful for any real estate
37 escrow person to charge any customer for complying with the
38 requirements of this section, unless the real estate escrow
39 person withholds and remits an amount to the State Tax Assessor
40 under this section. If the real estate escrow person is
41 instructed by the parties to withhold under this section and the
42 real estate escrow person remits a withholding amount to the
43 State Tax Assessor, it is unlawful for the fee to exceed \$25.

2 9. Liability of real estate escrow person. Unless it is
 3 shown that the failure to notify is due to reasonable cause, the
 4 real estate escrow person is liable for the withholding tax when
 5 written notification of the withholding requirements of this
 6 section is not provided to the buyer and the disposition of Maine
 7 real property is subject to withholding under this section. The
 8 real estate escrow person is not liable under this subsection if
 9 the tax due as a result of the disposition of Maine real property
 10 is paid by the original or extended due date of the seller's
 11 return for the taxable year in which the disposition occurred.

12 **Sec. 3. Application.** This Act applies to real estate
 13 transfers occurring on or after January 1, 1992.

14 **Sec. 4. Appropriation.** The following funds are appropriated
 15 from the General Fund to carry out the purposes of this Act.

	1991-92	1992-93
18		
19		
20	FINANCE, DEPARTMENT OF	
21		
22	Bureau of Taxation	
23		
24	Positions (2)	(2)
25	Personal Services \$33,401	\$46,761
26	All Other 10,515	5,465
27	Capital Expenditures 10,080	
28		
29	Provides funds for one Tax	
30	Examiner position and one	
31	Clerk Typist position in the	
32	Bureau of Taxation.	
33		
34	DEPARTMENT OF FINANCE	
35		
36	TOTAL	TOTAL
37	\$53,996	\$52,226

38 **FISCAL NOTE**

	1991-92	1992-93
39		
40		
41		
42	APPROPRIATIONS/ALLOCATIONS	
43		
44	General Fund \$53,996	\$52,226
45		
46	REVENUES	
47		
48	General Fund \$2,995,977	\$3,145,776
49	Other Funds 161,006	169,056
50		

2 This bill will require 2 positions and associated
administrative costs to implement. Those costs are estimated to
4 be \$53,996 in fiscal year 1991-92 and \$52,226 in fiscal year
1992-93.

6 Additional collections of income tax will increase General
Fund revenue by \$2,995,977 in fiscal year 1991-92 and \$3,145,776
8 in fiscal year 1992-93. The corresponding gain to the Municipal
Revenue Sharing program will be \$161,006 and \$169,056.'

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STATEMENT OF FACT

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16 This amendment replaces the bill with appropriate language
to enact a new tax-withholding methodology and adds an
application section, an appropriation and a fiscal note to the
18 bill.

Reported by the Committee on Taxation
Reproduced and distributed under the direction of the Clerk of the
House
(6/11/91) (Filing No. H-638)

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