

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)

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

COMMITTEE AMENDMENT "A" to H.P. 1197, L.D. 1750, Bill, "An Act Concerning Technical Changes to the Tax Laws"

Amend the bill by striking out all of section 1.

Further amend the bill by inserting after section 2 the following:

Sec. 3. 36 MRSA §187, sub-§1, as enacted by PL 1977, c. 679, §1, is repealed and the following enacted in its place:

1. Failure to file return. Any person who fails to make and file any return required under this Title at or before the time the return becomes due is liable for one of the following penalties.

A. If the return is filed before or within 15 days after the taxpayer receives from the State Tax Assessor a formal demand that the return be filed, the penalty is \$10 or 10% of the tax due, whichever is greater.

B. If the return is filed later than 15 days after the taxpayer receives from the State Tax Assessor a formal demand that the return be filed, the penalty is 100% of the tax due.

Sec. 4. 36 MRSA §187, sub-§2, as enacted by PL 1977, c. 679, §1, is amended to read:

2. False return. Any person who files a return under this Title which ~~that~~ is materially incorrect ~~shall-be~~ is liable for a penalty. If the return is materially incorrect because of negligence or intentional disregard of this Title or of any

2 ruling, ~~or rule or regulation~~ of the State Tax Assessor issued
3 pursuant to this Title, without intent to defraud, the penalty
4 ~~shall be~~ is in the amount of \$10 or 10% of the deficiency,
5 whichever is greater. If the return is materially incorrect
6 because of fraud with intent to evade the tax, the penalty shall
7 be is in the amount of \$50 or 50% of the deficiency, whichever is
8 greater. For purposes of this subsection, "negligence" means any
failure to make a reasonable attempt to comply with the
provisions of this Title.'

10 Further amend the bill by striking out all of section 4 and
12 inserting in its place the following:

14 'Sec. 4. 36 MRSA §187, sub-§3, ¶A, as enacted by PL 1985, c.
16 691, §7, is amended to read:

18 A. Any person who fails to pay, on or before its due date,
19 any tax due under this Title ~~shall be~~ is liable for a
20 penalty of \$5 or 5% ~~1%~~ of the unpaid tax, whichever is
21 greater, for each month or fraction thereof during which the
22 failure continues, provided that the penalty shall may not
23 exceed, in the aggregate, \$25 or 25% of the unpaid tax,
24 whichever is greater. For purposes of this subsection, an
25 amount assessed upon a person by the State Tax Assessor is
26 ~~to be~~ considered due as of the time prescribed for filing
the return on which it should have been reported.

28 Sec. 5. 36 MRSA §187, sub-§6 is enacted to read:

30 6. Waiver and abatement. The State Tax Assessor, upon
timely request for reconsideration pursuant to section 151, shall
32 waive or abate any penalty imposed by subsections 1 and 3
whenever:

34 A. The failure to file or pay resulted directly from
36 erroneous information provided by the Bureau of Taxation;

38 B. The failure to file or pay resulted directly from the
death or serious illness of the taxpayer or a member of the
40 taxpayer's immediate family;

42 C. The failure to file or pay resulted directly from a
natural disaster;

44 D. A return that was due monthly was filed less than one
46 month late and all of the taxpayer's returns and payments
during the preceding 12 months were timely;

48 E. A return that was due other than monthly was filed less
50 than one month late and all of the taxpayer's returns and

2 payments during the preceding 3 years were timely;

4 F. The taxpayer has supplied substantial authority
4 justifying the failure to file or pay; or

6 G. The amount subject to a penalty imposed by subsections 1
6 and 3 is de minimus when considered in relation to the
8 amount otherwise properly paid, the reason for the failure
8 to file or pay and the taxpayer's compliance history.

10 The burden of establishing grounds for waiver or abatement is on
12 the taxpayer. The following factors alone are not grounds for
14 the waiver or abatement of penalties: misinformation or
14 misunderstanding of the law; personal or business misfortune,
16 including personnel difficulties, reorganization and lack of
16 available funds; belief that a waiver of federal penalties by the
18 Internal Revenue Service also waives state penalties; and mistake
18 and unintentional error.'

20 Further amend the bill by striking out all of section 7.

22 Further amend the bill by inserting after section 9 the
22 following:

24 'Sec. 10. 36 MRSA §842, as amended by PL 1987, c. 772, §17,
26 is further amended to read:

28 **§842. Notice of decision**

30 The assessors, municipal officers, chief assessor or the
32 State Tax Assessor, in the case of the unorganized territory,
32 shall give to any person applying to them for an abatement of
34 taxes notice in writing of their decision upon the application
34 within 10 days after they take final action thereon. The notice
36 of decision must state that the applicant has 60 days from the
36 date the notice is received to appeal the decision. It must also
38 identify the board or agency designated by law to hear the
38 appeal. If the assessors, municipal officers, chief assessor or
40 State Tax Assessor, before whom an application in writing for the
40 abatement of a tax is pending, fails to give written notice of
42 their decision within 60 days from the date of filing of the
42 application, the application shall--be is deemed to have been
44 denied, and the applicant may appeal as provided in sections 843
44 and 844, unless the applicant shall has in writing have consented
46 to further delay. Denial in this manner is final action for the
46 purposes of notification under this section but failure to send
48 notice of decision does not affect the applicant's right of
48 appeal. This section shall does not apply to applications for
 abatement made under section 841, subsection 2.

2 Sec. 11. 36 MRSA §843, sub-§3 is enacted to read:

4 3. Notice of decision. Any agency to which an appeal is
6 made under this section is subject to the provisions for notice
 of decision in section 842.

8 Sec. 12. 36 MRSA §844, sub-§3 is enacted to read:

10 3. Notice of decision. An appeal to the county
12 commissioners is subject to the provisions for notice of decision
 in section 842.'

14 Further amend the bill by inserting after section 20 the
 following:

16 'Sec. 21. 36 MRSA §2903, sub-§1-A, as enacted by PL 1987, c.
18 793, Pt. B, §1, is amended to read:

20 1-A. Excise tax levied. Except as provided in subsection
22 2, an excise tax is levied and imposed at the rate of 17¢ per
24 gallon upon internal combustion engine fuel sold or used within
26 this State on or after April 1, 1989, including these sales when
28 made to the State or any political subdivision thereof, for any
30 purpose whatsoever; except the internal combustion engine fuel
32 sold or used in such form and under such circumstances as shall
34 preclude ~~precludes~~ the collection of this tax by reason of the
36 laws of the United States, or sold wholly for exportation from
38 the State, or brought into the State in the ordinary standardized
40 equipment fuel tank attached to and forming a part of a motor
42 vehicle and used in the operation of that vehicle within the
44 State, except that the rate is 3.4¢ per gallon upon internal
46 combustion engine fuel, as defined in section 2902, bought or
48 used by any person, association of persons, firm or corporation
50 for the purpose of propelling jet or turbojet engine aircraft,
 and except that no tax may be levied upon internal combustion
 engine fuel, as defined in section 2902, bought or used by any
 person, association of persons, firm or corporation for the
 purpose--of propelling jet or turbojet engine aircraft in
 international flight, or sold wholly for exportation from the
 State, or brought into the State in the fuel tanks of an
 aircraft, or on or after July 1, 1983, sold in bulk to any
 political subdivision of the State. On the same fuel only one
 tax shall must be paid to the State, for which tax the
 distributor first receiving the fuel in the State shall--be is
 primarily liable to the State, except when that fuel has been
 sold and delivered to a licensed exporter wholly for exportation
 from the State, or to another distributor in the State, in which
 case the purchasing distributor shall--be is primarily liable to
 the State for the tax.

2 This subsection ~~shall take~~ takes effect on April 1, 1989, and
4 subsection 1 is ~~to be~~ repealed on April 1, 1989, if the
6 Commissioner of Transportation certifies to the Governor that the
8 Federal Government has not appropriated to the State all federal
10 highway funds anticipated in fiscal year 1989 based on the United
States Highway Authorization Act and in addition has restored
the \$10,000,000 which was withheld in federal fiscal year 1988.
This subsection is repealed April 1, 1989, if it does not take
effect.

12 Sec. 22. 36 MRSA §2906, first ¶, as amended by PL 1983, c.
14 862, §87, is further amended to read:

16 Every distributor, importer, or exporter, holding a valid
18 certificate as such, shall on or before the last 21st day of each
month render a report to the State Tax Assessor stating the
20 number of gallons of internal combustion engine fuel received,
sold and used in the State by him that distributor, importer or
exporter during the preceding calendar month, on forms ~~to be~~
22 furnished by the State Tax Assessor. Such reports shall must
contain such further information pertinent thereto as the State
24 Tax Assessor ~~shall prescribe~~ prescribes and the State Tax
Assessor may make such other reasonable rules ~~and regulations~~
regarding the administration and enforcement of the Gasoline Tax
26 Act as ~~he may deem~~ considered necessary or expedient, copies of
which shall must be sent to such certificate holders. ~~He or his~~
28 The State Tax Assessor or a duly authorized agent shall must have
access during reasonable business hours to the books, invoices
30 and vouchers of such certificate holders which may show the fuel
handled by the certificate holder. At the time of the filing of
32 the report, each distributor and importer shall pay to the State
Tax Assessor a tax at the rate set forth in section 2903 upon
34 each gallon so reported as sold, distributed or used. An
allowance of not more than 1% from the amount of fuel received by
36 the distributor, plus 1% on all transfers in vessels, tank cars
or full tank truck loads by a distributor in the regular course
38 of ~~his~~ the distributor's business from one of ~~his~~ the
distributor's places of business to another within the State, may
40 be allowed by the State Tax Assessor to cover the loss through
shrinkage, evaporation or handling sustained by the distributor.
42 The total allowance for such losses shall may not exceed 2% of
the receipts by such distributor and no further deduction shall
44 may be allowed unless the State Tax Assessor is satisfied on
definite proof submitted to ~~him~~ the State Tax Assessor that a
46 further deduction should be allowed by ~~him~~ the State Tax Assessor
for a loss sustained through fire, accident or some unavoidable
48 calamity.'

C
O
M
M
I
T
T
E
E
A
M
E
N
D
M
E
N
T

2 Further amend the bill by inserting after section 22 the
following:

4 'Sec. 23. 36 MRSA §4433, sub-§1, as enacted by PL 1987, c.
6 772, §35, is amended to read:

8 1. Dealer. "Dealer" means a person who, in violation of
state or federal law, trafficks in or furnishes scheduled drugs
10 ~~weighing more than 7 grams or amounting to 10 or more dosage~~
~~units, or a person who trafficks in or furnishes more than 42 1/2~~
12 ~~grams of~~ or marijuana.

14 Sec. 24. 36 MRSA §4434, first ¶, as enacted by PL 1987, c. 772,
§35, is amended to read:

16 An excise tax is imposed by this chapter on any convicted
18 dealer convicted under state or federal law based on the amount
of marijuana or scheduled drug identified in the conviction. A
20 tax shall must be imposed at the following rates by the State Tax
Assessor:'

22 Further amend the bill by striking out all of sections 26
24 and 27.

26 Further amend the bill in section 28 in the first line (page
7, line 46 in L.D.) by striking out the following: "§5219-E" and
28 inserting in its place the following: '§5219-G'

30 Further amend the bill in section 28 in the 2nd line (page
7, line 48 in L.D.) by striking out the following: "§5219-E."
32 and inserting in its place the following: '§5219-G.'

34 Further amend the bill in section 28 in that part designated
"§5219-E." in the last line (page 8, line 2 in L.D.) by inserting
36 after the following: "chapter." the following: 'A partner's pro
rata share must equal the partner's percentage interest in the
38 taxable income or loss of the partnership for federal income tax
purposes for the taxable year. The pro rata share of a
40 shareholder of an S corporation must equal the shareholder's
percentage share of stock of the S corporation as of the end of
42 the taxable year.'

44 Further amend the bill by inserting at the end before the
emergency clause the following:

46 'Sec. 32. PL 1989, c. 871, §23 is amended to read:

48 Sec. 23. Effective date. The That section of this Act that
50 repeals the Maine Revised Statutes, Title 36, chapter 105,
subchapter V-A, ~~as repealed by this Act,~~ takes effect with regard

2 to property tax years based on the status of property as of April
1, 1990, or thereafter.

4 **Sec. 33. PL 1991, c. 15, first line after the enacting clause is**
repealed and the following enacted in its place:

6 **Sec. 1. 36 MRSA c. 105, sub-c. IV-A, as amended, is repealed.**

8 **Sec. 34. PL 1991, c. 15, §2 is enacted to read:**

10 **Sec. 2. Retroactivity.** This Act takes effect retroactively to
12 April 1, 1991.

14 **Sec. 35. Proposed fees.** The State Tax Assessor shall develop a
16 list of proposed fees and charges for services and materials
provided by the Bureau of Taxation. This list must be provided
18 to the Joint Standing Committee on Taxation by February 1, 1992.
Additional fees or charges beyond those in existence as of the
20 effective date of this Act may not be imposed until authorized by
the Legislature.

22 **Sec. 36. Retroactivity.** That section of this Act that amends
the Maine Revised Statutes, Title 36, section 2903, subsection
24 1-A takes effect retroactively to April 1, 1989.

26 **Sec. 37. Application date.** That section of this Act that
amends the Maine Revised Statutes, Title 36, section 2906 applies
28 to the returns due after September 1, 1991.

30 **Sec. 38. Retroactivity.** That section of this Act that amends
Public Law 1989, chapter 871, section 23 takes effect
32 retroactively to April 1, 1990.'

34 Further amend the bill in the emergency clause in the last
line (page 9, line 8 in L.D.) by inserting after the following:
36 "approved" the following: ', except as otherwise indicated'

38 Further amend the bill by renumbering the sections to read
consecutively.

40
42 **STATEMENT OF FACT**

44 This amendment makes the following changes to the bill:

46
48 1. Replaces an authorization for the State Tax Assessor to
impose fees and charges with a requirement to submit proposed
fees to the Legislature for approval;

