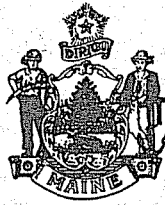


MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1750

H.P. 1197

House of Representatives, April 30, 1991

Submitted by the Department of Finance pursuant to Joint Rule 24.
Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

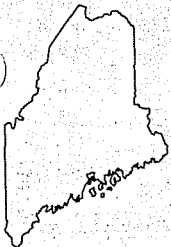
Presented by Representative BUTLAND of Cumberland.
Cosponsored by Representative KUTASI of Bridgton.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act Concerning Technical Changes to the Tax Laws.

(EMERGENCY)



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

Whereas, delay in making technical corrections to the tax
laws would interfere with administration of those laws; and

Whereas, legislative action is immediately necessary to
ensure continued and efficient administration of the tax laws; and

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

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

Sec. 1. 36 MRSA §112, sub-§9 is enacted to read:

9. Charge for services and materials. When necessary, the
State Tax Assessor may establish uniform fees for services and
materials provided by the Bureau of Taxation. Fees may not be
charged for services or materials that are required to be
provided for requesting taxpayers to file tax information or pay
any tax. Revenues derived from these fees must be used to offset
the expense of providing these services and materials.

Sec. 2. 36 MRSA §177, sub-§1, as amended by PL 1987, c. 497,
§4, is further amended to read:

1. Generally. All sales and use taxes collected by any
person pursuant to Part 3, all taxes collected by any person
under color of Part 3 which have not been properly returned or
credited to the persons from whom they were collected, all taxes
collected by any person pursuant to chapter 451 or 459, all fees
collected pursuant to chapter 719 and all taxes collected by any
person pursuant to chapter 827 shall constitute a special fund in
trust for the State Tax Assessor. The liability for the taxes
shall be or fees and any interest or penalty on taxes or fees is
enforceable by assessment and collection, in the manner
prescribed in this Part, against the person and against any
officer, director, member, agent or employee of that person who,
in that capacity, is responsible for the control or management of
the funds or finances of that person or is responsible for the
payment of that person's taxes.

Sec. 3. 36 MRSA §187, sub-§5, as amended by PL 1981, c. 364,
§16, is further amended to read:

5. Generally. Each penalty provided by this section shall
be is in addition to any interest and other penalties provided by

2 this section and other law, but interest shall does not accrue on
the penalty. This section shall does not apply to any filing or
4 payment responsibility pursuant to Part 2. The penalties imposed
by subsections 1 and 3 shall accrue automatically, without being
6 assessed by the State Tax Assessor, and each penalty imposed by
this section shall be is recoverable by the State Tax Assessor in
the same manner as if it were a tax assessed under this Title.
8 For cause any of the grounds enumerated in subsection 6,
paragraphs A to E, the State Tax Assessor may shall waive or
10 abate all or any part of any penalty imposed by subsections 1 and
3 of this section. A request to waive or abate any penalty may
12 be made pursuant to section 151. For purposes of this section,
the term "person" includes an individual, corporation, or
14 partnership or any officer or employee of a corporation,
including a dissolved corporation, or a member or employee of a
16 partnership who, as the officer, employee or member, is under a
duty to perform the act in respect of which the violation occurs.

18
19 **Sec. 4. 36 MRSA §187, sub-§6 is enacted to read:**

20
21 6. Waiver and abatement. The State Tax Assessor, upon
22 timely request for reconsideration pursuant to section 151, shall
23 wave or abate any penalty imposed by subsections 1 and 3 when it
24 appears that:

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

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

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

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

35 E. A return or payment that was due other than monthly was
36 filed less than one month late and all of the taxpayer's
37 returns and payments during the preceding 3 years were
38 timely.

39 The burden of establishing grounds for waiver or abatement is on
40 the taxpayer.

41 **Sec. 5. 36 MRSA §191, sub-§2, ¶D, as enacted by PL 1977, c.**
42 **668, §2, is amended to read:**

43 D. The disclosure of information to duly authorized
44 officers of the United States and of other states, districts
45

2 and territories of the United States and of the provinces of
4 Canada for use in administration and enforcement of the tax
6 laws of those jurisdictions. The information may be given
8 only ~~en--the--written--request--of~~ to the duly authorized
10 officer when the officer's government permits a
12 substantially similar exchange of information with the
14 taxing officials of this State and when the government
16 provides for the secrecy of information in a manner
18 substantially similar to the manner set out in this section;

20 **Sec. 6. 36 MRSA §581, first ¶**, as amended by PL 1979, c. 445,
22 **§1**, is further amended to read:

24 If the assessor determines that land subject to this
26 subchapter no longer meets the requirements of this subchapter,
28 the assessor may must withdraw the parcel from taxation under
30 this subchapter. The owner of land subject to this subchapter
may at any time request withdrawal of any parcel, or portion
thereof, from taxation under this subchapter by certifying to the
assessor that the land is no longer to be classified under this
subchapter.

32 **Sec. 7. 36 MRSA §611, first ¶** is amended to read:

34 Machinery and other personal property brought into this
36 State, after April 1st and prior to December 31st ~~by--any--person~~
38 ~~upon--whom~~ on which no personal property tax was assessed en as of
40 April 1st in the State of Maine, shall must be taxed as other
42 personal property in the town in which it is used for the first
44 time in this State.

46 **Sec. 8. 36 MRSA §655, sub-§1, ¶L**, as amended by PL 1973, c.
48 613, **§21**, is amended to read:

50 L. Registered snowmobiles as defined in Title 12, section
52 ~~1971~~ 7821, subsection 5.

54 **Sec. 9. 36 MRSA §656, sub-§1, ¶C**, as amended by PL 1983, c.
56 777, **§4**, is further amended to read:

58 C. The landing area of a privately owned airport, the use
60 of which is approved by the ~~Bureau--of--Aeronautics~~ Air
62 Transportation Division, ~~shall--be~~ is exempt from taxation
64 when the owner grants free use of that landing area to the
66 public.

68 **Sec. 10. 36 MRSA §1102, sub-§8**, as enacted by PL 1975, c. 726,
70 **§2**, is amended to read:

72 **8. Pastureland.** "Pastureland" means the combined acreage
within a farm unit of land devoted to the production of forage
plants used for annual animal production.

2 **Sec. 11. 36 MRSA §1481, sub-§3**, as amended by PL 1969, c. 414,
3 §6, is further amended to read:

4 **3. Motor vehicle.** "Motor vehicle" means any self-propelled
5 vehicle not operated exclusively on tracks, including
6 motorcycles, but not including aircraft. "Motor vehicle" shall
7 does not include any vehicle prohibited by law from operating on
8 the public highways. "Motor vehicle" shall does not include any
9 snowmobile as defined in Title 12, section ~~1971~~ 7821.

11 **Sec. 12. 36 MRSA §1752, sub-§7** is amended to read:

12 **7. Motor vehicle.** "Motor vehicle" means any self-propelled
13 vehicle designed for the conveyance of passengers or property on
14 the public highways. "Motor vehicle" includes an all-terrain
15 vehicle as defined in Title 12, section 7851 and a snowmobile as
16 defined in Title 12, section 7821.

17 **Sec. 13. 36 MRSA §1760, sub-§3, ¶E**, as repealed and replaced
18 by PL 1985, c. 819, Pt. A, §§40 and 41, is amended to read:

19 **E.** Sales of heated food or drinks; sandwiches; ice cream,
20 frozen yogurt or ice milk in a cone or cup, including
21 sundaes, sodas, frappes and the like, ice cream, frozen
22 yogurt or ice milk novelties and-pepsieles.

23 **Sec. 14. 36 MRSA §1760, sub-§8-C**, as enacted by PL 1983, c.
24 852, §3, is repealed.

25 **Sec. 15. 36 MRSA §1760, sub-§13** is repealed.

26 **Sec. 16. 36 MRSA §1760, sub-§20**, as repealed and replaced by
27 PL 1989, c. 588, Pt. E, is amended to read:

28 **20. Continuous residence; refunds and credits.** Rental
29 charged to any person who resides continuously for 28 days at any
30 one hotel, rooming house, tourist or trailer camp if:

31 **A.** The person does not maintain a primary residence at some
32 other location; or

33 **B.** The person is residing away from that person's primary
34 residence in connection with employment or education.

35 Tax paid by such person to the retailer under section 1812 during
36 the initial 28-day period shall must be refunded by the retailer.
37 Such tax reported and paid to the State by the retailer may be
38 taken as a credit by the retailer on the report filed by the
39 retailer covering the month in which refund was made to such
40 tenant.

2 This subsection applies to all rentals of any hotel, rooming
4 house or tourist or trailer camp for occupancy on or after July
6 1, 1991 regardless of the date on which payment for the rental is
8 made.

6 Sec. 17. 36 MRSA §1760, sub-§25, as repealed and replaced by
8 PL 1987, c. 772, §21, is amended to read:

10 25. Watercraft sold to nonresidents. Sales in this State
12 to nonresidents of ~~yachts and other pleasure boats and commercial~~
14 ~~vessels and boats actually registered for numbering, enrolled or~~
16 ~~documented under federal or foreign law in the appropriate~~
18 ~~customhouses or registry offices for location thereof or home~~
20 ~~ports outside the State~~ watercraft, when such craft are either
22 delivered outside the State or delivered in the State to be
24 sailed or transported outside the State immediately upon delivery
26 by the seller; and any sales to nonresidents, under contracts for
28 the construction of any such craft to be so delivered, of
materials to be incorporated; and any sales to nonresidents for
the repair, alteration, refitting, reconstruction, overhaul or
restoration of any such craft to be so delivered, of materials to
be incorporated. Unless the craft is present in the State for
more than 30 days during the 12-month period following its date
of purchase or is registered in Maine without also being
registered in another state or documented with a ~~home-port~~
location in Maine this State, within 12 months of the date of
purchase, the purchaser shall ~~be~~ is exempt from the use tax.

30 Sec. 18. 36 MRSA §1760, sub-§45, ¶A-1, as repealed and replaced
32 by PL 1987, c. 772, §22, is amended to read:

34 A-1. If the property is a watercraft, ~~as defined in chapter~~
36 ~~112~~, which is registered outside the State by an owner who
38 at the time of purchase was a resident of another state and
the watercraft is present in the State not more than 30 days
during the 12 months following its purchase; or

40 Sec. 19. 36 MRSA §1764, as repealed and replaced by PL 1989,
42 c. 878, Pt. A, §106, is amended to read:

44 **§1764. Tax against certain casual sales**

46 The tax imposed by chapters 211 to 225 shall must be levied
48 upon all casual sales involving the sale of camper trailers,
50 motor vehicles, special mobile equipment, livestock trailers,
52 watercraft or aircraft except those sold for resale at retail
sale or to a corporation when the seller is the owner of a
majority of the common stock of the corporation.

54 Sec. 20. 36 MRSA §1813, as amended by PL 1977, c. 696, §276,
56 is further amended to read:

2 **§1813. Illegal collection of sales tax prohibited**

4 Any retailer who knowingly charges or collects as the sales
6 tax due on the sale price of any property or rental service an
amount in excess of that provided by section 1812 shall ~~be guilty~~
of commits a Class E crime.

8
10 **Sec. 21. 36 MRSA §4063, sub-§1**, as amended by PL 1985, c. 535,
§8, is further amended to read:

12 1. **Amount.** A tax is imposed upon the transfer of the estate
14 of every person who, at the time of death, was a resident of this
State. The amount of this tax is a ~~sum~~ equal to the amount by
16 which the maximum credit for state death taxes allowable ~~to a~~
~~decedent's estate~~ determined under the Code, Section 2011 ~~2011-B~~,
18 in this chapter sometimes referred to as the "credit," exceeds
the lesser of:

20 A. The aggregate amount of all constitutionally valid
22 estate, inheritance, legacy and succession taxes actually
paid to the several states of the United States, other than
24 this State, in respect of any property owned by that
decedent or subject to those taxes as a part of or in
connection with ~~his~~ the decedent's estate; or

26 B. An amount equal to such proportion of such allowable
28 credit as the value of properties taxable by other states
bears to the value of the entire federal gross estate
30 wherever situated.

32 **Sec. 22. 36 MRSA §4070**, as enacted by PL 1981, c. 451, §7, is
amended to read:

34 **§4070. Extension of time for filing return**

36 For good cause shown, the State Tax Assessor may grant a
38 reasonable extension of time for filing any return required by
this chapter, ~~provided that the taxpayer, on or before that date~~
40 ~~prescribed for payment of the tax, files a tentative return, in~~
~~such form as the State Tax Assessor may require, and pays with~~
42 ~~that return the amount of tax reasonably estimated to be due as~~
44 long as an extension request as required by the State Tax
Assessor is filed and payment reasonably estimating the tax due
is paid.

46
48 **Sec. 23. 36 MRSA §4832, sub-§2**, as amended by PL 1989, c. 927,
§5, is further amended to read:

50 2. **Exemption.** Transactions that, under the laws of this
52 State, are not subject to taxation in accordance with Part 3 are
exempt from the fee imposed by subsection 1. Sales of tires and

2 ~~lead-acid-batteries~~ any items that occur as part of a sale of a
trailer, a mobile home or any motorized vehicle are exempt from
the fee imposed by subsection 1.

4
6 Sec. 24. 36 MRSA §5102, sub-§8, as amended by PL 1987, c. 841,
§2, is further amended to read:

8 8. **Maine net income.** "Maine net income" means, for any
taxable year for any corporate taxpayer, the taxable income of
10 that taxpayer for that taxable year under the laws of the United
States as modified by section 5200-A and apportionable to this
12 State under chapter 821. To the extent that it derives from a
unitary business carried on by 2 or more members of an affiliated
14 group, the Maine net income of a corporation shall--be is
determined by apportioning that part of the federal taxable
16 income of the entire group which derives from the unitary
business, except income of an 80-20 corporation. If a taxable
18 corporation is an S corporation, "Maine net income" means the
amount taxable at the federal level pursuant to the Code, Section
20 1374.

22 Sec. 25. 36 MRSA §5102, sub-§10, as amended by PL 1983, c.
571, §16, is further amended to read:

24 10. **Taxable corporation.** "Taxable corporation" means, for
any taxable year, a corporation which, at any time during that
26 taxable year, realized Maine net income. "Taxable corporation"
28 includes any S corporation that is required by section 5241 to
file a return and that is subject to federal tax under the Code,
30 Section 1374.

32 Sec. 26. 36 MRSA §5211, sub-§15, ¶B, as enacted by P&SL 1969,
c. 154, §F, is amended to read:

34 B. The property is shipped from an office, store,
36 warehouse, factory or other place of storage in this State
and the purchaser is the United States Government or the
38 taxpayer is not taxable in the state of the purchaser. As
used in this subsection, "taxpayer" means the individual
40 corporate entity making the sale, determined without
reference to a unitary business.

42 Sec. 27. 36 MRSA §5219-C, as enacted by PL 1989, c. 585, Pt.
44 C, §17, is repealed.

46 Sec. 28. 36 MRSA §5219-E is enacted to read:

48 §5219-E. Tax credits for partners and S corporation shareholders

50 Each partner or shareholder of an S corporation is allowed a
credit against the tax imposed by chapter 803 in an amount equal

2 to the partner or shareholder's pro rata share of the tax credits
3 described in this chapter.

4 **Sec. 29. 36 MRSA §5243**, as amended by PL 1989, c. 508, §21,
5 is repealed and the following enacted in its place:

6 **§5243. Requirement to file amended Maine returns**

7
8 **1. Amended returns required.** A taxpayer shall file an
9 amended Maine return as required in this Part whenever the
10 taxpayer files an amended federal return affecting the taxpayer's
11 liability under this Part, whenever the Internal Revenue Service
12 changes or corrects any item affecting the taxpayer's liability
13 under this Part or whenever for any reason there is a change or
14 correction affecting the taxpayer's liability under this Part.

15
16 **2. Amended return filed.** The amended return must be filed
17 within 90 days of the final determination of the change or
18 correction or the filing of the federal amended return.

19
20 **3. Contents of amended return.** The amended return must
21 indicate the change or correction and the reason for that change
22 or correction. The amended return constitutes an admission as to
23 the correctness of the change unless the taxpayer includes with
24 the return a written explanation of the reason the change or
25 correction is erroneous. If the taxpayer files an amended
26 federal return, a copy of the amended federal return must be
27 attached to the amended Maine return.

28
29 **4. Additional requirements.** The assessor may require
30 additional information to be filed with the amended return. The
31 assessor may prescribe exceptions to the requirements of this
32 section.

33
34 **Sec. 30. 36 MRSA §5276, sub-§1**, as amended by PL 1981, c. 504,
35 §3, is further amended to read:

36
37 **1. General rule.** The State Tax Assessor, within the
38 applicable period of limitations, may credit an overpayment of
39 income tax, including overpayment reported on a joint return, and
40 interest on such overpayment against any liability in respect of
41 any tax imposed under this Title on the taxpayer, or the
42 taxpayer's spouse in the case of a joint return, who made the
43 overpayment, and the balance, after any setoff pursuant to
44 section 5276-A, shall must be refunded by the Treasurer of State.

45
46 **Sec. 31. 36 MRSA §5279, sub-§4**, as amended by PL 1981, c. 504,
47 §5, is further amended to read:

48
49 **4. Exceptions.** If any overpayment of tax imposed by this
50 Part is refunded within 3 months after the last date prescribed,
51 or permitted by extension of time, for filing the return of that
52

2 tax or within 3 months after the return listing the overpayment
3 was filed, whichever is later, no interest shall-be is allowed
4 under this section. In addition, no interest may-be is allowed
5 with respect to the period during which a refund is delayed
6 pending resolution of a proposed setoff under section 5276-A.

7 **Emergency clause.** In view of the emergency cited in the
8 preamble, this Act takes effect when approved.

10 **STATEMENT OF FACT**

11 This bill makes technical amendments to various laws
12 concerning taxation. This bill:

13 Allows the State Tax Assessor to charge uniform fees for the
14 provision of materials and services;

15 Extends the sales tax trust fund provision to include solid
16 waste disposal fees;

17 Provides standards for the State Tax Assessor to use in
18 waiving and abating penalties;

19 Clarifies that exchange of information agreements may
20 provide for regular or periodic exchanges;

21 Requires the assessor to withdraw land from taxation under
22 the Maine Tree Growth Tax Law if it no longer meets the
23 requirements of that law;

24 Clarifies that the property tax on equipment brought into
25 the State is on the property rather than on the owner;

26 Updates statutory references to a repealed section;

27 Changes a reference to "Bureau of Aeronautics" to "Air
28 Transportation Division";

29 Corrects a reference to "annual production" to read "animal
30 production";

31 Accords frozen yogurt the same sales tax treatment as ice
32 cream and deletes a redundant reference to popsicles;

33 Deletes an obsolete reference to ethanol blended fuel;

34 Repeals the sales tax exemption on sales of Bibles, recently
35 ruled unconstitutional, and other books, literature and utensils
36 of worship used on and by established churches for religious
37 instruction and prayer;

2 Clarifies the applicability of an amendment to the sales tax
exemption for certain rentals;

4
6 Deletes an unnecessary definition of watercraft;

8 Amends the Maine Revised Statutes, Title 36, section 1764 to
reflect the current judicial interpretation of that law;

10 Updates a reference to "rental" to read "service";

12 Clarifies a reference to a section of the United States
Internal Revenue Code for estate tax purposes;

14
16 Removes a requirement for the filing of tentative estate tax
returns;

18 Amends the solid waste disposal fee to reflect the Bureau of
Taxation construction exempting any item when sold as part of a
20 sale of mobile home or motor vehicle;

22 Conforms the income tax laws to Bureau of Taxation practice
by bringing the filing requirements for S corporations into
24 conformity with the Internal Revenue Code;

26 Preserves the consistent interpretation of the income tax
laws treating "taxpayer" as an individual corporation rather than
28 a unitary group and rejects the interpretation adopted by
California in In Re Finnigan;

30
32 Repeals an obsolete section relating to solid waste
reduction investment tax credit;

34 Amends the income tax laws to reflect the bureau's
construction allowing the pass-through of tax credits to partners
36 and S corporation shareholders;

38 Replaces the Maine Revised Statutes, Title 36, section 5243
with a section that more clearly expresses the requirements for
40 filing amended Maine income tax returns;

42 Clarifies the status of offsets of tax refunds made on joint
returns; and

44
46 Clarifies that "return" in Title 36, section 5279,
subsection 4 means the amended return and not the original return.