

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1991

Legislative Document

No. 1990

H.P. 1407

House of Representatives, December 19, 1991

Reference to the Committee on Taxation suggested and ordered printed.

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

EDWIN H. PERT, Clerk

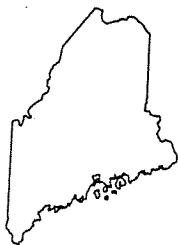
Presented by Representative CASHMAN of Old Town.
Cosponsored by Representative DORE of Auburn.

STATE OF MAINE

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

**An Act to Make Technical Corrections to the Laws Regarding
Withholding Tax on Real Estate Transfers.**

(EMERGENCY)



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

4
Whereas, the law governing the withholding of real estate
6 transfer tax was recently amended; and

8
Whereas, that recent amendment, which is scheduled to take
effect January 1, 1992, contains technical problems; and

10
Whereas, in the judgment of the Legislature, these facts
12 create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
14 necessary for the preservation of the public peace, health and
safety; now, therefore,

16
Be it enacted by the People of the State of Maine as follows:

18
Sec. 1. 36 MRSA §5250-A, sub-§1, ¶C, as enacted by PL 1991, c.
20 591, Pt. Y, §2 and affected by §3, is amended to read:

22 C. "Resident," when used in reference to an individual,
estate or trust, means an individual, estate or trust that
24 has established a domicile in the State as of the date of
transfer of the Maine real property, or that was a resident
26 for purposes of the previous income tax year, unless the
individual, estate or trust has established a domicile
28 outside of the State as of the date of transfer of the Maine
real property. "Resident," when used in reference to a
30 corporation, means a corporation that, as of the date of
transfer of the Maine real property, is incorporated in the
32 State or maintains a permanent place of business in the
State. "Resident," when used in reference to a partnership,
34 means a partnership at least 75% of whose ownership
interest, as of the date of the transfer of Maine real
36 property, is held by residents of this State.

38
Sec. 2. 36 MRSA §5250-A, sub-§3-A is enacted to read:

40
3-A. Foreclosure sales; transfers in lieu of foreclosure.
42 No tax is required to be withheld pursuant to this section by a
buyer at a foreclosure sale when the consideration paid does not
44 exceed the debt secured by the property held by a mortgagee or
lienholder; if the consideration paid does exceed the secured
46 debt, the amount of tax withheld pursuant to this section must be
the lesser of the surplus over the secured debt or the amount
48 otherwise required to be withheld by this section. When a
mortgagor conveys the mortgaged property to a mortgagee in lieu
of foreclosure and with no additional consideration, the

2 mortgagee is not required to withhold tax pursuant to this
3 section.

4 **Sec. 3. 36 MRSA §5250-A, sub-§5**, as enacted by PL 1991, c.
5 591, Pt. Y, §2 and affected by §3, is amended to read:

6
7 **5. False certificate.** If a buyer has actual knowledge that
8 a certificate furnished under subsection 3, ~~paragraph~~-B is false
9 and the buyer fails to withhold the prescribed amount, the buyer
10 is liable for the amount that should have been withheld and any
11 applicable interest and penalty.

12 **Sec. 4. 36 MRSA §5250-A, sub-§10** is enacted to read:

13 **10. Application of withholding.** The amount withheld
14 pursuant to this section is deemed to be a payment against the
15 tax imposed by this Part on income received by the seller.

16
17 **Emergency clause.** In view of the emergency cited in the
18 preamble, this Act takes effect when approved.

19
20
21 **STATEMENT OF FACT**

22
23 This bill makes technical corrections to the law regarding
24 withholding tax on real estate transfers.
25
26