

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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Legislative Document

No. 1562

S.P. 540

In Senate, June 29, 1993

An Act to Clarify Tax on Intangible Income.

(EMERGENCY)

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Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator SUMMERS of Cumberland. (GOVERNOR'S BILL).  
Cosponsored by Senator: BALDACCI of Penobscot, Representatives: SPEAR of Nobleboro,  
TARDY of Palmyra.

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 Maine Supreme Judicial Court has recently  
6 decided Boulet v. State Tax Assessor and the holding on that case  
is contrary to the established practice of the Bureau of  
8 Taxation; and

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

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

18 **Sec. 1. 36 MRSA §5142, sub-§3, as enacted by P&SL 1969, c.**  
154, §F, is amended to read:

20  
3. **Intangibles.** Income from intangible personal property,  
22 including annuities, dividends, interest and gains from the  
disposition of intangible personal property, shall--constitute  
24 constitutes income derived from sources within this State only to  
the extent that such the income is from property of the taxpayer  
26 employed in a business, trade, profession, or occupation carried  
on in this State.

28  
**Sec. 2. 36 MRSA §5217-A, as amended by PL 1991, c. 591, Pt.**  
30 **N, §16 and affected by §17, is further amended to read:**

32 **§5217-A. Income tax paid to other taxing jurisdiction**

34 A resident individual is allowed a credit against the tax  
otherwise due under this Part, excluding the tax imposed by  
36 section 5203-A, for the amount of income tax imposed on that  
individual for the taxable year by another state of the United  
38 States, a political subdivision of any such state, the District  
of Columbia or any political subdivision of a foreign country  
40 that is analogous to a state of the United States with respect to  
income derived from sources in that taxing jurisdiction also  
42 subject to tax under this Part, except that a tax imposed by  
another jurisdiction on intangible income is eligible for the  
44 credit only to the extent that the income is derived from  
property of the taxpayer employed in a business, trade,  
46 profession or occupation carried on in that jurisdiction. The  
credit, for any of the specified taxing jurisdictions, may not  
48 exceed the proportion of the tax otherwise due under this Part,  
excluding the tax imposed by section 5203-A, that the amount of  
50 the taxpayer's Maine adjusted gross income derived from sources  
in that taxing jurisdiction bears to the taxpayer's entire Maine  
52 adjusted gross income; provided that, when a credit is claimed  
for taxes paid to both a state and a political subdivision of a

2 state, the total credit allowable for those taxes does not exceed  
the proportion of the tax otherwise due under this Part,  
4 excluding the tax imposed by section 5203-A, that the amount of  
the taxpayer's Maine adjusted gross income derived from sources  
6 in the other state bears to the taxpayer's entire Maine adjusted  
gross income.

8 **Sec. 3. Application.** This Act applies to tax years beginning  
on or after January 1, 1990, except that this Act does not apply  
10 to a request for a refund pursuant to Maine Revised Statutes,  
Title 36, section 5217-A that is filed during the period  
12 beginning May 21, 1993 and ending 15 days after the effective  
date of this Act.

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

18

### 20 STATEMENT OF FACT

This bill responds to the decision of the Maine Supreme  
22 Judicial Court in the recent case of Boulet v. State Tax Assessor  
and is intended to clearly establish the Legislature's support  
24 for the long-standing practice of the Bureau of Taxation in  
denying a credit for tax paid to another jurisdiction on  
26 intangible income when the income in question is not derived from  
a taxpayer's property employed in a business, trade, profession  
28 or occupation carried on in that jurisdiction.