

MAINE STATE LEGISLATURE

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TAXATION

Reported by: Senator HATHAWAY of York for the Committee.

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**STATE OF MAINE
SENATE
117TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT " A" to S.P. 697, L.D. 1771, Bill, "An Act Concerning Technical Changes to the Tax Laws"

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

Sec. 1. 36 MRSA §112, sub-§5-A is enacted to read:

5-A. Agreements with other states. The State Tax Assessor may enter into agreements with the tax departments of other states that the assessor considers appropriate for assistance in the administration and enforcement of this Title.

Sec. 2. 36 MRSA §174, sub-§1, as enacted by PL 1981, c. 364, §12, is amended to read:

1. Generally. If any a taxpayer fails to pay any a tax imposed by this Title on or before the due date of that tax, the State Tax Assessor, through the Attorney General, may commence a civil action within 6 years of ~~that due date~~ the issuance of the demand notice required by section 171 in any a court of competent jurisdiction ~~within in~~ this State in the name of the State for the recovery of that tax. In this action, the certificate of the ~~State-Tax-Assessor~~ assessor showing the amount of the delinquency is prima facie evidence of the levy of the tax, of the delinquency and of the compliance by the ~~State--Tax--Assessor~~ assessor with this Title in relation to the assessment of the tax.

2 **Sec. 3. 36 MRSA §176-A, sub-§16**, as amended by PL 1993, c.
395, §5, is further amended to read:

4 **16. Time for collection of taxes.** Taxes must be collected
5 by levy within 10 years after the assessment of the tax, becomes
6 final or ~~prior--to~~ before the expiration of any the period of
7 collection agreed upon in writing by the assessor and the
8 taxpayer. The period agreed upon may be extended by subsequent
9 agreements in writing made before the expiration of the period
10 previously agreed upon. Any A levy action ordered by the
11 assessor before the expiration of the 10-year period continues
12 beyond the expiration of the 10-year period for a period of 6
13 months from the date such the levy is first made or until the
14 liability out of which such the levy arose is satisfied or
15 becomes unenforceable, whichever occurs first. The running of
16 the 10-year period is stayed during the time that a consensual
17 payment plan between the taxpayer and the assessor is in effect.
18 ~~When any question relative to the taxes is pending before any~~
19 ~~agency or court at the end of the 10-year period, the assessor's~~
20 ~~right to collect any tax due by levy continues until 6 years~~
21 ~~after the final determination of the question.~~ When a taxpayer
22 files for protection under the United States Bankruptcy Code, the
23 assessor's right to collect any the tax due by levy continues
24 until 6 years after the date of discharge or dismissal of the
25 bankruptcy proceeding or until 10 years after the assessment of
26 the tax becomes final, whichever occurs later.

28 **Sec. 4. 36 MRSA §177, sub-§1**, as amended by PL 1991, c. 546,
29 §1, is further amended to read:

30 **1. Generally.** All sales and use taxes collected by any a
31 person pursuant to Part 3, all taxes collected by any a person
32 under color of Part 3 which that have not been properly returned
33 or credited to the persons from whom they were collected, all
34 taxes collected by any or imposed on a person pursuant to chapter
35 451 or 459, all fees collected pursuant to chapter 719 and all
36 taxes collected by any a person pursuant to chapter 827
37 constitute a special fund in trust for the State Tax Assessor.
38 The liability for the taxes or fees and any the interest or
39 penalty on taxes or fees is enforceable by assessment and
40 collection, in the manner prescribed in this Part, against the
41 person and against any officer, director, member, agent or
42 employee of that person who, in that capacity, is responsible for
43 the control or management of the funds or finances of that person
44 or is responsible for the payment of that person's taxes.

46 **Sec. 5. 36 MRSA §187-B, sub-§7, ¶G**, as enacted by PL 1991, c.
47 873, §5 and affected by §§8 and 9, is amended to read:

2 G. The amount subject to a penalty imposed by subsections 1
and-2 1, 2 and 4-A is de minimis when considered in relation
4 to the amount otherwise properly paid, the reason for the
failure to file or pay and the taxpayer's compliance history.

6 Sec. 6. 36 MRSA §191, sub-§2, ¶T is enacted to read:

8 T. The disclosure by employees of the Bureau of Taxation to
10 designated representatives of the Secretary of State of
12 information required by the Secretary of State for the
administration of the special fuel tax imposed by chapter
459.

14 Sec. 7. 36 MRSA §193 is enacted to read:

16 §193. Returns; declaration covering perjury; submission of
18 returns and funds by electronic means

20 Any return, report or other document required to be made
22 pursuant to this Title must contain a declaration, in a form
24 prescribed by the State Tax Assessor, that the statements
26 contained in the return, report or other document are true and
28 made under the penalties of perjury. The assessor may allow the
30 filing of a return or document by electronic data submission or
by telephone. The assessor may also allow the payment of a tax
or the refund of a tax by the electronic transfer of funds. An
electronic funds transfer allowed by the assessor pursuant to
this section is considered a return. The assessor may adopt
rules to establish procedures necessary to implement the
provisions of this section.

32 Sec. 8. 36 MRSA §1752, sub-§10, as repealed and replaced by PL
34 1987, c. 497, §21, is amended to read:

36 10. Retailer. "Retailer" means any a person who makes
38 retail sales or who is required to register by section 1754 or
section 1754-A or who is registered under section 1756.

40 Sec. 9. 36 MRSA §2113, as amended by PL 1991, c. 780, Pt.
CCC, §3, is further amended to read:

42 §2113. Criminal penalties

44 Any violation of any provision of chapters-211-to-225 this
46 Part for which a penalty or forfeiture is not provided by any
other Title-of-the-Revised-Statutes-shall-be provision of law is
48 a Class E crime, except that any violation of any provision of
this Part for which a penalty or forfeiture is not provided by
any other provision of law by a person who has a prior conviction

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2 ~~under the same provision within the prior 3 years is a Class D~~
3 ~~crime. For the purpose of this section, every person required to~~
4 ~~register under section 1754 who shall engage in any business for~~
5 ~~which registration is required under section 1754, without being~~
6 ~~the holder of a currently valid registration certificate, shall~~
7 ~~commit a separate offense for each calendar week or part thereof~~
8 ~~during which he shall be so engaged.~~

9 ~~For purposes of this section, a person required to register~~
10 ~~under section 1754-A who engages in any business for which~~
11 ~~registration is required under section 1754-A without being the~~
12 ~~holder of a currently valid registration certificate commits a~~
13 ~~separate offense for each calendar month or part of a month~~
14 ~~during which that person engages in that business.~~

15 **Sec. 10. 36 MRSA §3204-B, sub-§1**, as enacted by PL 1995, c.
16 271, §7, is amended to read:
17

18 **1. Generally.** Except as provided in subsection 2, a person
19 may not operate a motor vehicle on the public ways of this State
20 or allow a motor vehicle to be operated on the public ways of
21 this State if the fuel supply tanks of the vehicle contain dyed
22 fuel or other fuel on which the tax imposed by section 3203 has
23 not been paid. For purposes of this subsection, there is a
24 rebuttable presumption that the owner of a motor vehicle has
25 operated the motor vehicle or allowed the motor vehicle to be
26 operated on the public ways of this State with dyed fuel or other
27 fuel when the tax imposed by section 3203 has not been paid by
28 the owner of the motor vehicle.
29

30 **Sec. 11. 36 MRSA §3219-A, sub-§2, ¶G**, as enacted by PL 1995,
31 c. 271, §11, is amended to read:
32

33 **G.** If the person is a user or an agent or employee of a
34 user, consuming special fuel in a registered motor vehicle
35 when the user does not have a valid license issued pursuant
36 to section 3207 3206. Each day or part of a day during
37 which this paragraph is violated constitutes a separate
38 violation within the meaning of this section.
39

40 **Sec. 12. 36 MRSA §3223**, as repealed and replaced by PL 1989,
41 c. 502, Pt. A, §134, is repealed.
42

43 **Sec. 13. 36 MRSA §3743** is amended to read:
44

45 **§3743. Intent of provisions**

46 ~~The intent and purpose of this chapter, imposing an estate~~
47 ~~tax, is to obtain for this State the benefit of the credit~~
48 ~~allowed under Title III, section 301, subsection (b) of the~~
49
50

H. A. S.

COMMITTEE AMENDMENT "A" to S.P. 697, L.D. 1771

2 Federal Revenue Act of 1926 to the extent that this State may be
entitled by this chapter by imposing an additional tax, and the
4 ~~same--shall~~ this chapter must be liberally construed to effect
this purpose. ~~The State Tax Assessor may make such regulations~~
6 ~~relative to the assessment and the collection of the tax provided~~
~~by this chapter, not inconsistent with law, as may be necessary~~
~~to carry out this intent.~~

8
9 **Sec. 14. 36 MRSA §4305**, as repealed and replaced by PL 1977,
10 c. 694, §711, is amended to read:

12 **§4305. Certification**

14 Every processor or shipper of blueberries shall, ~~each year~~
~~before processing or shipping blueberries,~~ obtain certification
16 from the State Tax Assessor. The ~~State Tax Assessor~~ assessor
shall provide the applications for the certification, which shall
18 must contain the name under which the processor or shipper is
transacting business within in the State, the place or places of
20 business, the names and addresses of the several persons
constituting a firm or partnership, and, if a corporation, the
22 corporate name and names and addresses of its principal officers
and agents within in the State. ~~No~~ A processor or shipper shall
24 may not process or ship any blueberries until the certification
has been issued. Certification may be suspended or revoked by
26 the ~~State Tax Assessor~~ assessor for failure to pay such ~~blueberry~~
the tax as ~~may be due~~ imposed by section 4303 or for the filing
28 of false or fraudulent reports or returns ~~as required by the~~
~~State Tax Assessor.~~ ~~All certification shall expire July 1st,~~
30 ~~annually, and shall~~ A certificate issued by the assessor pursuant
to this section is not ~~be deemed to be~~ a license within the
32 meaning of that term in the Maine Administrative Procedure Act.

34 **Sec. 15. 36 MRSA §5122, sub-§2, ¶G**, as enacted by PL 1989, c.
36 880, Pt. G, §4, is amended to read:

38 G. For income tax years commencing on or after January 1,
1989, an amount equal to the total premiums spent for
40 insurance policies for long-term care ~~which~~ that have been
certified by the Superintendent of Insurance as complying
42 with Title 24-A, chapter 68; and

44 **Sec. 16. 36 MRSA §5122, sub-§2, ¶H**, as amended by PL 1991, c.
591, Pt. N, §7 and affected by §8, is further amended to read:

46 H. For each taxable year subsequent to the year of the
loss, an amount equal to the absolute value of any the net
48 operating loss arising from tax years beginning on or after
January 1, 1989, but before January 1, 1993, for which
50 federal adjusted gross income was increased in accordance

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2 with subsection 1, paragraph H and that pursuant to the
United-States-Internal-Revenue-Code Code, Section 172 was
4 carried back for federal income tax purposes, but only to
the extent that:

- 6 (1) Maine net taxable income is not reduced below zero;
- 8 (2) The taxable year is within the allowable federal
period for carry-over; and
- 10 (3) The amount has not been previously used as a
12 modification pursuant to this subsection; and

14 **Sec. 17. 36 MRS §5122, sub-§2, ¶I** is enacted to read:

16 I. For income tax years beginning on or after January 1,
18 1991, an amount equal to the amount by which federal taxable
20 income was reduced because of vessel earnings from fishing
operations that were contributed to a capital construction
fund.

22 **Sec. 18. 36 MRS §5164, sub-§3,** as enacted by P&SL 1969, c.
24 154, §F, §1, is amended to read:

26 **3. Alternate attribution of adjustment.** The assessor may by
regulation authorize, upon the taxpayer's written request, the
28 use of such other methods of determining to whom the items
comprising the fiduciary adjustment ~~shall be~~ are attributed, as
30 may be appropriate and equitable, ~~on such terms and conditions as~~
~~the assessor may require.~~

32 **Sec. 19. 36 MRS §5176, sub-§2,** as enacted by P&SL 1969, c.
34 154, §F, §1, is amended to read:

36 **2. Alternate methods.** The assessor may ~~by regulation~~
establish authorize, upon the taxpayer's written request, the use
38 of such other method or methods of determining the respective
shares of the beneficiaries and of the estate or trust in its
40 income derived from sources in this State, and in the
modifications related ~~thereto~~ to such other method or methods, as
42 may be appropriate and equitable.

44 **Sec. 20. 36 MRS §5200-A, sub-§2, ¶H,** as amended by PL 1991,
c. 591, Pt. N, §12 and affected by §13, is further amended to
46 read:

48 **H.** For each taxable year subsequent to the year of the
loss, an amount equal to the absolute value of any the net
operating loss arising from tax years beginning on or after
50 January 1, 1989 but before January 1, 1993 and that,

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pursuant to the ~~United-States-Internal-Revenue-Code Code~~,
Section 172, was carried back for federal income tax
purposes, but only to the extent that:

- (1) Maine net taxable income is not reduced below zero;
- (2) The taxable year is within the allowable federal
period for carry-over; and
- (3) The amount has not been previously used as a
modification pursuant to this subsection.

Sec. 21. 36 MRSA §§5232, 5233 and 5240, as enacted by P&SL
1969, c. 154, §F, §1, are repealed.

Sec. 22. 36 MRSA §5241, as amended by PL 1987, c. 819, §12,
is further amended to read:

§5241. Partnership and S corporation returns

Every partnership and S corporation ~~having~~ with a resident
partner or shareholder or ~~having--any~~ with income derived from
sources in this State, determined in accordance with the
applicable rules of section 5142 as in the case of a nonresident
individual, shall make a return for the taxable year setting
forth all items of income, gain, loss, and deduction, and the
names and addresses of the individuals whether residents or
nonresidents who would be entitled to share in the net income if
distributed and the amount of the distributive share of each
individual and such other pertinent information as the ~~assessor~~
State Tax Assessor may prescribe ~~by---regulations---and~~
instructions. Any return, statement or other document required
of a partnership must be signed by one or more partners. The
appropriate return shall must be filed on or before the 15th day
of the 4th month for partnerships or the 15th day of the 3rd
month for S corporations following the close of each taxable
year. For purposes of this section, "taxable year" means a year
or period ~~which~~ that would be a taxable year of the partnership
or S corporation if it were subject to the tax under this Part.
The ~~State--Tax--Assessor~~ assessor may elect to waive the
requirement to file a Maine return as established in this section
for ~~any-particular~~ a tax year and in its place require the
partnership or S corporation to file a copy of its federal
partnership or S corporation return.

Sec. 23. 36 MRSA §5242, as enacted by P&SL 1969, c. 154, §F,
§1, is amended to read:

§5242. Information returns

2 The assessor State Tax Assessor may ~~prescribe regulations~~
and ~~instructions requiring~~ require returns of information to be
4 made and filed on or before February 28th of each year by any a
person making payment or crediting in any a calendar year the
6 amounts of \$600 or more (\$10 or more in the case of interest or
dividends) to any a person who may be subject to the tax imposed
8 under this Part. ~~Sueh~~ The returns may be required of any a
person, including lessees or mortgagors of real or personal
10 property, fiduciaries, employers, and all officers and employees
of this State, or of any a municipal corporation or political
12 subdivision of this State, having the control, receipt, custody,
disposal or payment of dividends, interest, rents, salaries,
14 wages, premiums, annuities, compensations, remunerations,
emoluments or other fixed or determinable gains, profits, or
16 income, except interest coupons payable to bearer. A duplicate of
the statement as to tax withheld on wages, required to be
18 furnished by an employer to an employee, ~~shall constitute~~
constitutes the return of information required to be made under
this section with respect to ~~sueh~~ those wages.

20
22 **Sec. 24. 36 MRSA §5250, sub-§3**, as amended by PL 1979, c. 541,
Pt. A, §243, is further amended to read:

24 **3. Withholding agreements.** The assessor may enter into
agreements with the tax departments of other states, ~~which that~~
26 require income tax to be withheld from the payment of wages and
salaries, so as to govern the amounts to be withheld from the
28 wages and salaries of residents of ~~sueh~~ those states under this
chapter. ~~Sueh~~ The agreements may provide for recognition of
30 anticipated tax credits in determining the amounts to be withheld
and, ~~under regulations prescribed by the assessor,~~ may relieve
32 employers in this State from withholding income tax on wages and
salaries paid to nonresident employees. The agreements authorized
34 by this subsection are subject to the condition that the tax
department of ~~sueh~~ the other states grant similar treatment to
36 residents of this State.

38 **Sec. 25. 36 MRSA §5250-A, sub-§3, ¶¶C and D**, as enacted by PL
1991, c. 591, Pt. Y, §2 and affected by §3, are amended to read:

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

44 D. Written notification of the withholding requirements of
this section has not been provided to the buyer; or

46 **Sec. 26. 36 MRSA §5250-A, sub-§3, ¶E** is enacted to read:
48

2 E. The seller is the State or an agency or a political
3 subdivision of the State, the Federal Government or an
4 agency of the Federal Government, an organization exempt
5 from income taxes pursuant to the Code, Section 501(a), an
6 insurance company exempt from the tax imposed by this Part
7 or a business entity referred to in Title 24-A, section
8 1157, subsection 5, paragraph B, subparagraph (1) that is
9 exempt from the tax imposed by this Part.

10 **Sec. 27. 36 MRSA §5252**, as amended by PL 1981, c. 371, §3, is
11 further amended to read:

12 **§5252. Credit for tax withheld**

13 Wages and other items of income upon which tax is required
14 to be withheld ~~shall be~~ are taxable under this Part as if no
15 withholding were required, but ~~any~~ the amount of tax actually
16 deducted and withheld under this chapter in ~~any a~~ a calendar year
17 shall ~~be~~ is deemed to have been paid to the assessor on behalf of
18 the person from whom withheld, and ~~sueh~~ the person shall ~~be~~ is
19 credited with having paid that amount of tax for the taxable year
20 beginning in ~~sueh~~ the calendar year. ~~For a taxable year of less~~
21 ~~than 12 months, the credit shall be made under regulations of the~~
22 ~~assessor.~~ If more than one taxable year begins in a calendar
23 year, the amount is allowed as a credit for the most recent
24 taxable year.

25 **Sec. 28. 36 MRSA §5266**, as amended by PL 1977, c. 694, §724,
26 is repealed.

27 **Sec. 29. 36 MRSA §5276-A, sub-§1**, as amended by PL 1993, c.
28 395, §23, is further amended to read:

29 **1. Generally.** Any An agency of the State, including the
30 University of Maine System or the Maine Technical College System,
31 that is authorized to collect from any an individual or
32 corporation a liquidated debt greater than \$25 shall notify in
33 writing the State Tax Assessor and supply information necessary
34 to identify the debtor whose refund is sought to be set off. The
35 ~~State Tax Assessor,~~ assessor, upon ~~any sueh~~ notification, shall
36 assist the requesting agency by setting off that debt, ~~pursuant~~
37 ~~to rules promulgated by the State Tax Assessor,~~ against any a
38 refund to which that individual or corporation is entitled under
39 this Part. Liquidated child support debts that the Department of
40 Human Services has contracted to collect, pursuant to Title 19,
41 section 448-A or 495, subsection 2, are eligible, under the
42 provisions of this section, for setoff against any a refund due
43 the obligated individual. The ~~State Tax Assessor~~ assessor shall
44 provide the creditor agency with the name, address and social
45 security number of each debtor whose refund is subject to setoff.

2 **Sec. 30. 36 MRSA §5284, sub-§1**, as amended by PL 1993, c. 253,
§1, is further amended to read:

4
6 **1. Maine Endangered and Nongame Wildlife Fund.** Taxpayers
who, when filing their return, are entitled to a refund under
8 this Part may designate any that a part of that refund be paid
into the Maine Endangered and Nongame Wildlife Fund established
10 in Title 12, section 7757. A taxpayer who is not entitled to a
refund under this Part may contribute to the Maine Endangered and
12 Nongame Wildlife Fund by including with that taxpayer's return
sufficient funds to make the contribution. Each individual
14 income tax return form must contain a designation in
substantially the following form: "Contribution to Maine
16 Endangered and Nongame Wildlife Fund: () \$5, () \$10, ()
\$25 or () Other \$."

18 **Sec. 31. 36 MRSA §5285, sub-§1**, as amended by PL 1993, c. 600,
Pt. A, §280, is further amended to read:

20
22 **1. Maine Children's Trust Incorporated.** Taxpayers who,
when filing their returns, are entitled to a refund under this
24 Part may designate that a portion of that refund be paid into the
Maine Children's Trust Incorporated established in Title 22,
chapter 1058. A taxpayer who is not entitled to a refund under
26 this Part may contribute to the Maine Children's Trust
Incorporated by including with that taxpayer's return sufficient
28 funds to make the contribution. Each individual income tax
return form must contain a designation in substantially the
30 following form: "Contributions to Maine Children's Trust
Incorporated: () \$5, () \$10, () \$25 or () Other \$."

32 **Sec. 32. 36 MRSA §6207, sub-§1, ¶A-1**, as amended by PL 1995, c.
34 368, Pt. CCC, §8 and affected by §11, is further amended to read:

36 A-1. Fifty percent of that portion of the benefit base that
exceeds 5.0% but does not exceed 10.0% of income and plus
38 100% of that portion of the benefit base that exceeds 10% of
income to a maximum payment of \$700.

40 **Sec. 33. 36 MRSA §6213**, as enacted by PL 1987, c. 516, §§3
42 and 6, is amended to read:

44 **§6213. Appeal**

46 A denial in whole or in part of relief claimed under this
chapter may be appealed in accordance with section 151 and the
48 Maine Administrative Procedure Act, ~~Title 5, chapter 375.~~

2 **Sec. 34. 36 MRSA §6652, sub-§1**, as enacted by PL 1995, c. 368,
Pt. FFF, §2, is amended to read:

4 **1. Generally.** Subject to the provisions of subsection 2
and of sections 6653 and 6654, a person against whom taxes have
6 been assessed pursuant to Part 2, except for chapters 111 and
7 112, with respect to eligible property and who has paid those
8 taxes is entitled to reimbursement of those taxes from the State.

10 **Sec. 35. Retroactivity.** That section of this Act that amends
the Maine Revised Statutes, Title 36, section 6652, subsection 1
12 applies retroactively to June 29, 1995.'

14 Further amend the bill by inserting at the end before the
statement of fact the following:

16 **' FISCAL NOTE**

18 This bill increases the penalty for certain crimes from
20 Class E to Class D crimes. If the number of jail sentences is
increased, the cost to the counties is estimated to be \$83.70 per
22 day per prisoner with increased jail time. Costs to the counties
for both Class D and Class E crimes are not reimbursed by the
24 State. The amount of any increase of jail time and the resulting
costs to the county jail system are expected to be insignificant.

26 The Judicial Department will incur some minor additional
28 costs associated with increased workload and indigent defense
costs related to these cases where the class of crime is
30 increased. The collection of additional fines may also increase
General Fund revenue by minor amounts.'

32 **STATEMENT OF FACT**

34 This amendment replaces the bill, makes technical
36 corrections, clarifications and minor substantive changes to
various tax laws and repeals obsolete tax provisions.

COMMITTEE AMENDMENT