

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

No. 1760

S.P. 590

In Senate, April 9, 1997

An Act to Adopt the Multistate Tax Compact.

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

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 RUHLIN of Penobscot.
Cosponsored by Representative SPEAR of Nobleboro and
Representatives: GAGNON of Waterville, MORGAN of South Portland.

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

4 Sec. 1. 5 MRSA §12004-K, sub-§11-A is enacted to read:

6 11-A. Multistate Expenses 36 MRSA
State Tax Compact Only chapter
8 Government 920

10 Sec. 2. 36 MRSA Pt. 10 is enacted to read:

12 PART 10

14 INTERSTATE TAX COMPACTS

16 CHAPTER 920

18 MULTISTATE TAX COMPACT

20 §7101. Statement of purpose

22 The Legislature finds that it is in the best interest of the
people of the State for the State to become a full-voting member
24 of the Multistate Tax Commission. The Multistate Tax Commission
acts to protect state tax authority from unwarranted federal
26 intervention, supports the growth of commerce by improving the
administrative efficiency and marketplace equity of state
28 business tax systems and encourages voluntary uniformity in
multistate tax policies. The Legislature further finds that the
30 Multistate Tax Commission will ensure that the State's tax system
works fairly and effectively in a complex national and global
32 economy.

34 §7102. Definitions

36 As used in this chapter, unless the context otherwise
indicates, the following terms have the following meanings.

38 1. Capital stock tax. "Capital stock tax" means a tax
measured in any way by the capital of a corporation considered in
40 its entirety.

42 2. Commission. "Commission" means the Multistate Tax
Commission.

44 3. Compact. "Compact" means the Multistate Tax Compact.

46 4. Gross receipts tax. "Gross receipts tax" means a tax,
48 other than a sales tax, that is imposed on or measured by the
gross volume of business in terms of gross receipts or in other

2 terms and in the determination of which no deduction is allowed
3 that constitutes the tax an income tax.

4 5. Income tax. "Income tax" means a tax imposed on or
5 measured by net income including any tax imposed on or measured
6 by an amount arrived at by deducting expenses from gross income,
7 one or more forms of which expenses are not specifically and
8 directly related to particular transactions.

10 6. Sales tax. "Sales tax" means a tax imposed with respect
11 to the transfer for a consideration of ownership, possession or
12 custody of tangible personal property or the rendering of
13 services measured by the price of the tangible personal property
14 transferred or services rendered and required by state or local
15 law to be stated separately from the sales price by the seller or
16 customarily stated separately from the sales price, but does not
17 include a tax imposed exclusively on the sale of a specifically
18 identified commodity or article or class of commodities or
19 articles.

20 7. State. "State" means a state of the United States, the
21 District of Columbia, the Commonwealth of Puerto Rico or any
22 territory or possession of the United States.

23 8. Subdivision. "Subdivision" means any governmental unit
24 or special district of a state.

25 9. Tax. "Tax" means an income tax, capital stock tax,
26 gross receipts tax, sales tax, use tax and any other tax that has
27 a multistate impact, except that the provisions of section 7107
28 apply only to the taxes specifically designated in section 7107.

29 10. Taxpayer. "Taxpayer" means any corporation,
30 partnership, firm, association, governmental unit or agency or
31 person acting as a business entity in more than one state.

32 11. Use tax. "Use tax" means a nonrecurring tax, other
33 than a sales tax, that is imposed on or with respect to the
34 exercise or enjoyment of any right or power over tangible
35 personal property incident to the ownership, possession or
36 custody of that property or the leasing of that property from
37 another including any consumption, keeping, retention or other
38 use of tangible personal property and is complementary to a sales
39 tax.

40 **§7103. Representation on commission**

41 The assessor represents the State on the commission, except
42 that the assessor may designate an alternate representative. An

2 alternate must be either the assessor's designee or a division
3 director in the Bureau of Taxation.

4 **§7104. Multistate Tax Compact Advisory Committee**

6 The Multistate Tax Compact Advisory Committee, as
7 established under the compact and referred to in this chapter as
8 the "committee." The committee is composed of the State Tax
9 Assessor, an alternate designated by the assessor, the Attorney
10 General or the Attorney General's designee, 2 members of the
11 Senate appointed by the President of the Senate and 2 members of
12 the House of Representatives appointed by the Speaker of the
13 House. The assessor serves as the chair. The committee shall
14 meet at the call of the chair or at the request of a majority of
15 the members and must meet at least 3 times each year. The
16 committee may consider matters relating to recommendations of the
17 commission and the activities of the members in representing the
18 State.

20 **§7105. Multistate Tax Compact**

22 The Multistate Tax Compact, as established in Title 5,
23 section 12004-K, subsection 11-A and in this chapter, may enter
24 into any agreements with other entities.

26 **§7106. Purposes**

28 The purposes of this compact are to: facilitate proper
29 determination of state and local tax liability of multistate
30 taxpayers, including the equitable apportionment of tax bases and
31 settlement of apportionment disputes; promote uniformity or
32 compatibility in significant components of tax systems;
33 facilitate taxpayer convenience and compliance in the filing of
34 tax returns and in other phases of tax administration; and avoid
35 duplicative taxation.

36 **§7107. Elements of sales and use tax laws**

38 **1. Tax credits.** Each purchaser liable for a use tax on
39 tangible personal property is entitled to full credit for the
40 combined amount or amounts of legally imposed sales or use taxes
41 paid with respect to the same property to another state and any
42 subdivision. The credit must be applied first against the amount
43 of any use tax due the State and any unused portion of the credit
44 must be applied against the amount of any use tax due a
45 subdivision.

48 **2. Exemptions.** When a vendor receives and accepts in good
49 faith from a purchaser a resale or other exemption certificate or
50 other written evidence of exemption authorized by the appropriate
state or subdivision taxing authority, the vendor

1 is relieved of liability for a sales or use tax for that
2 transaction.

4 **§7108. Commission; organization and management**

6 The Multistate Tax Commission is established. It is
8 composed of one member from each party state who is the head of
10 the state agency charged with the administration of the types of
12 taxes to which the compact applies. If there is more than one
14 agency, the State shall provide by law for the selection of the
16 commission member from the directors of the relevant agencies. A
18 member of the commission may be represented by an alternate only
20 if there is on file with the commission written notification of
the designation and identity of the alternate. The attorney
general of each party state or a designee or other counsel if the
laws of the party state specifically provide is entitled to
attend the meetings of the commission but may not vote.
Attorneys general, their designees or other counsel may receive
all notices of meetings of the commission. The commission is
subject to the following.

22 1. Selection of representatives. Each party state shall
24 provide by law for the selection of representatives from its
26 subdivisions affected by the compact to consult with the
commission member from that state.

28 2. Voting. Each member is entitled to one vote. The
30 commission may not act unless a majority of the members are
present and an action is not binding unless approved by a
majority of the members.

32 3. Official seal. The commission shall adopt an official
34 seal for use by the commission.

36 4. Annual meeting. The commission shall hold an annual
38 meeting and any other meetings provided by its bylaws and any
40 special meetings its executive committee determines necessary.
42 The commission bylaws must specify the dates of the annual and
other meetings and provide notice of annual, regular and special
meetings. Notice of a special meeting must include the reason
for the meeting and an agenda of the items to be considered.

44 5. Election of officers. The commission shall elect
46 annually from among its members a chair, a vice-chair and a
48 treasurer. The commission shall appoint an executive director
who serves at its pleasure and the commission shall fix the
duties and compensation of the executive director. The executive
director also serves as secretary of the commission. The
commission shall make provisions for the bonding of its officers
and employees it considers appropriate.

2 6. Personnel. Irrespective of the civil service, personnel
4 or other merit system laws of any party state, the executive
6 director shall appoint or discharge personnel necessary to carry
8 out the functions of the commission and fix the duties and
10 compensation of the personnel. The commission bylaws must
12 provide personnel policies and programs. The commission may
14 borrow, accept or contract for the services of personnel from any
16 state, the United States or any other governmental entity.

18 7. Accept money. The commission may accept donations and
20 grants of money, equipment, supplies, materials and services,
22 conditional or otherwise, from any governmental entity for its
24 use or disposal.

26 8. Establish offices. The commission may establish one or
28 more offices for the transacting of its business.

30 9. Adopt bylaws. The commission shall adopt bylaws for the
32 conduct of its business. The commission shall publish its bylaws
34 in convenient form and file a copy of the bylaws and any
36 amendments with the appropriate agency or officer in each of the
38 party states.

40 10. Report. The commission shall make to the governor and
42 legislature of each party state an annual report of its
44 activities for the preceding year. Any donation or grant
46 accepted by the commission or services borrowed must be reported
48 in the annual report of the commission and include the nature,
50 amount and conditions, if any, of the donation, gift, grant or
 services borrowed and the identity of the donor or lender. The
 commission may make additional reports it considers desirable.

34 **§7109. Committees**

36 To assist in the conduct of its business when the full
38 commission is not meeting, the commission shall have an executive
40 committee of 7 members, including the chair, vice-chair,
42 treasurer and 4 other members elected annually by the
44 commission. The executive committee, subject to the provisions
46 of the compact and consistent with the policies of the
48 commission, shall function as provided in the bylaws of the
50 commission. The commission may establish advisory and technical
 committees, which may include private persons and public
 officials, to carry out its activities. The committees may
 consider any matter of concern to the commission, including
 problems of special interest to any party state and problems
 dealing with particular types of taxes. The commission may
 establish additional committees as its bylaws provide.

2 **§7110. Powers**

4 In addition to powers conferred in the compact, the
6 commission has the power to:

8 1. Study other systems. Study state and local tax systems
10 and particular types of state and local taxes;

12 2. Develop and recommend proposals. Develop and recommend
14 proposals for an increase in uniformity or compatibility of state
16 and local tax laws by encouraging the simplification and
18 improvement of state and local tax laws and administration;

20 3. Publish information. Compile and publish information
22 that would assist the party states in implementation of the
24 compact and taxpayers in complying with state and local tax laws;
26 and

28 4. Administration. Do all things necessary and incidental
30 to the administration of its functions pursuant to the compact.

32 **§7111. Finance**

34 The commission shall submit to the governor or designated
36 officer or officers of each party state a budget of its estimated
38 expenditures for a period required by the laws of that state for
40 presentation to the party state's legislature. Any budget
42 submission is subject to the following.

44 1. Specific recommendations. Each of the commission's
46 budgets of estimated expenditures must contain specific
48 recommendations of the amounts to be appropriated by each of the
50 party states. The total amount of appropriations required under
each budget must be apportioned among the party states by
apportioning 1/10th in equal shares and the remainder in
proportion to the amount of revenue collected by each party state
and its subdivisions from income taxes, capital stock taxes,
gross receipts taxes and sales and use taxes. In determining the
amounts, the commission shall employ available public sources of
information that present the most equitable and accurate
comparisons among the party states. Each of the commission's
budgets of estimated expenditures and requests for appropriations
must indicate the sources used in obtaining information employed
in applying the formula contained in this subsection.

2. May not pledge credit of state. The commission may not
pledge the credit of any party state. The commission may meet
any of its obligations in whole or in part with funds available
to it under section 7108, subsection 7, provided that the
commission takes specific action setting aside funds before

2 incurring any obligation to be met in whole or in part in such a
3 manner. Except when the commission makes use of funds available
4 to it under section 7108, subsection 7, the commission may not
5 incur any obligation before the allotment of adequate funds by
6 the party states.

7 3. Keep accurate records. The commission shall keep
8 accurate accounts of all receipts and disbursements. The
9 receipts and disbursements of the commission are subject to the
10 audit and accounting procedures established under its bylaws.
11 All receipts and disbursements of funds handled by the commission
12 must be audited yearly by a certified or licensed public
13 accountant and the report of the audit must be included in and
14 become part of the annual report of the commission.

15 4. Accounts open for inspection. The accounts of the
16 commission must be open at any reasonable time for inspection by
17 duly constituted officers of the party states and by any persons
18 authorized by the commission.

19 5. Audit by contributors. This section may not be
20 construed to prevent commission compliance with laws relating to
21 audit or inspection of accounts by or on behalf of any
22 governmental entity contributing to the support of the commission.
23

24 §7112. Uniform rules and forms

25 When 2 or more party states or subdivisions of party states
26 have uniform or similar provisions of law relating to an income
27 tax, capital stock tax, gross receipts tax or sales or use tax,
28 the commission may adopt uniform rules for any phase of the
29 administration of that law, including assertion of jurisdiction
30 to tax or prescribing uniform tax forms. The commission may also
31 act with respect to the provisions of section 7107. Before the
32 adoption of any rule, the commission shall:

33 1. Public hearing required. As provided in its bylaws,
34 hold at least one public hearing on due notice to all affected
35 party states and subdivisions and to all taxpayers and other
36 persons who have made a timely request of the commission for
37 advance notice of its rule-making proceedings; and

38 2. Submission of data and views. Afford all affected party
39 states and subdivisions and interested persons an opportunity to
40 submit relevant written data and views, which the commission
41 shall consider fully.

42 Rules adopted by the commission must be submitted to the
43 appropriate officials of all party states and subdivisions to
44

2 which the rules apply. Each state and subdivision shall consider
3 any rule for adoption in accordance with its own laws and
4 procedures.

5 Rules adopted pursuant to this chapter are major substantive
6 rules as defined in the Maine Administrative Procedure Act, Title
7 5, chapter 375, subchapter II-A.

8
9 **§7113. Interstate audits**

10
11 Any party state or subdivision desiring to make or
12 participate in an audit of any accounts, books, papers, records
13 or other documents may request the commission to perform the
14 audit on its behalf. In responding to the request, the
15 commission has access to and may examine, at any reasonable time,
16 accounts, books, papers, records and other documents and any
17 relevant property or stock of merchandise. The commission may
18 enter into agreements with party states or their subdivisions for
19 assistance in performance of the audit. The commission shall
20 charge, to be paid by the state or local government or
21 governmental entity for which it performs the service, for any
22 audits performed by it in order to be reimbursed for the actual
23 costs incurred in making the audit. Any audit is governed by the
24 following.

25
26 **1. Attendance required.** The commission may require the
27 attendance of a person within the state in which it is conducting
28 an audit or part of an audit at a time and place fixed by it
29 within the state for the purpose of giving testimony with respect
30 to any account, book, paper, document, other record, property or
31 stock of merchandise being examined in connection with the audit.
32 If the person is not within the jurisdiction of the commission,
33 the person may be required to attend that audit at any time and
34 place fixed by the commission within the state of which that
35 person is a resident.

36
37 **2. Court may order compulsory process.** The commission may
38 apply to any court having the power to issue compulsory process
39 for orders in aid of its powers and responsibilities pursuant to
40 this section and any such court has jurisdiction to issue the
41 orders. Failure of a person to obey any such order is punishable
42 as contempt of the issuing court. If the party or subject matter
43 on account of which the commission seeks an order is within the
44 jurisdiction of the court to which application is made, the
45 application may be to a court in the state or subdivision on
46 behalf of which the audit is being made or a court in the state
47 in which the object of the order being sought is situated.

48
49 **3. Decline of audit.** The commission may decline to perform
50 an audit if it finds that its available personnel or other

2 resources are insufficient for that purpose or that, in the terms
3 requested, the audit is impracticable. If the commission, on the
4 basis of its experience, has reason to believe that an audit of a
5 particular taxpayer, either at a particular time or on a
6 particular schedule, is of interest to a number of party states
7 or their subdivisions, it may offer to make the audit or audits,
8 contingent upon sufficient participation as determined by the
9 commission.

10 **4. Information confidential.** Information obtained by any
11 audit pursuant to this section is confidential and available only
12 for tax purposes to party states, their subdivisions or the
13 United States. Availability of information must be in accordance
14 with the laws of the states or subdivisions on whose account the
15 commission performs the audit and only through the appropriate
16 agencies or officers of those states or subdivisions. This
17 section may not be construed to require any taxpayer to keep
18 records for any period not otherwise required by law.

19 **5. Other arrangements.** Other arrangements made or
20 authorized pursuant to law for a cooperative audit by or on
21 behalf of the party states or any of their subdivisions are not
22 superseded or invalidated by this section.

23 **6. Charges against taxpayers prohibited.** The commission
24 may not make any charge against a taxpayer for an audit.

25 **7. Tax defined.** As used in this section, "tax," in
26 addition to the meaning defined in section 7107, subsection 9,
27 means any tax or license fee imposed in whole or in part for
28 revenue purposes.

29 **§7114. Arbitration**

30 When the commission finds a need for settling disputes
31 concerning apportionments and allocations by arbitration, it may
32 adopt a rule, notwithstanding the provisions of section 7112.

33 **1. Arbitration panel.** The commission shall select and
34 maintain an arbitration panel composed of officers and employees
35 of state and local governments and private persons who are
36 knowledgeable and experienced in matters of tax laws and
37 administration.

38 **2. Taxpayer to secure arbitration.** When a taxpayer who has
39 elected to employ the tax credits or exemptions under section
40 7107 or when the laws of the party state or any subdivision of
41 the party state are substantially identical with the relevant
42 provisions of section 7107, the taxpayer, by written notice to
43 the commission, shall elect to arbitrate the dispute.

2 the commission and to each party state or subdivision of the
3 party state that would be affected, may secure arbitration of an
4 apportionment or allocation if that taxpayer is dissatisfied with
5 the final administrative determination of the tax agency of the
6 state or subdivision of that state on the grounds that it would
7 subject that taxpayer to double or multiple taxation by 2 or more
8 party states or subdivisions of those states. Each party state
9 and subdivision of that state consents to the arbitration
10 provided in this section and agrees to be bound.

11 **3. Arbitration board; composition.** The arbitration board
12 is composed of one person selected by the taxpayer, one person by
13 the agency or agencies involved and one member of the
14 commission's arbitration panel. If the agencies involved are
15 unable to agree on the person to be selected by them, that person
16 is selected by lot from the total membership of the arbitration
17 panel. The 2 persons selected for the board in the manner
18 provided by the provisions of this subsection shall jointly
19 select the 3rd member of the board. If they are unable to agree
20 on the selection, the 3rd member is selected by lot from among
21 the total membership of the arbitration panel. A member of a
22 board selected by lot is not qualified to serve if that member is
23 an officer or employee of or is otherwise affiliated with any
24 party to the arbitration proceeding. Residence within the
25 jurisdiction of a party to the arbitration proceeding does not
26 constitute affiliation within the meaning of this subsection.

27 **4. Board to choose location for hearing.** The board may sit
28 in any state or subdivision party to the proceeding, in the state
29 of the taxpayer's incorporation, residence or domicile, in any
30 state in which the taxpayer does business or in any place that it
31 finds most appropriate for gaining access to relevant evidence.

32 **5. Due notice.** The board shall give due notice of the
33 times and places of its hearings. The parties are entitled to be
34 heard, to present evidence and to examine and cross-examine
35 witnesses. The board shall act by majority vote.

36 **6. Board powers.** The board may administer oaths, take
37 testimony, subpoena and require the attendance of witnesses and
38 the production of accounts, books, papers, records and other
39 documents and issue commissions to take testimony. Subpoenas may
40 be signed by any member of the board. In case of failure to obey
41 a subpoena, and upon application by the board, any judge of a
42 court of competent jurisdiction of the state in which the board
43 is sitting or in which the person to whom the subpoena is
44 directed may be found may make an order requiring compliance with
45 the subpoena and the court may punish failure to obey the order
46 as a contempt.

2 7. Expenses allocated among parties. Unless the parties
4 otherwise agree, the expenses and other costs of the arbitration
6 are assessed and allocated among the parties by the board in a
8 manner it determines. The commission shall fix a schedule of
10 compensation for arbitration board members and of other allowable
12 expenses and costs. An officer or employee of a state or local
14 government who serves as a member of a board is not entitled to
16 compensation unless that officer or employee is required on
18 account of service to forego the regular compensation resulting
20 from the officer's or employee's public employment but is
22 entitled to expenses.

24 8. Board to determine apportionment or allocation. The
26 board shall determine the disputed apportionment or allocation
28 and any matters necessary to that apportionment or allocation.
30 The determinations of the board are final for purposes of making
32 the apportionment or allocation, but for no other purpose.

34 9. Filing requirements. The board shall file with the
36 commission and with each tax agency represented in the
38 proceeding the determination of the board, the board's written
40 statement of its reasons for the determination, the record of the
42 board's proceedings and any other document required by the
44 arbitration rules of the commission to be filed.

46 10. Board to publish determinations. The commission shall
48 publish the determinations of boards, together with the
50 statements of the reasons.

11. Adopt rules. The commission shall adopt and publish
rules and file a copy of those rules and any amendment to the
rules with the appropriate agency or officer in each of the party
states.

12. Written compromise allowed. This section does not
prevent, at any time, a written compromise of any matter or
matters in dispute, if otherwise lawful, by the parties to the
arbitration proceedings.

40 §7115. Entry into force and withdrawal

42 This compact takes effect when enacted into law by any 7
44 states. The commission shall arrange for notification of all
46 party states when there is a new enactment of the compact. The
48 following provisions also apply.

50 1. Withdrawal from compact. Any party state may withdraw
from this compact by enacting a statute repealing the compact for
that state. A withdrawal does not affect any liability already
incurred by or chargeable to a party state before that withdrawal.

2 **2. Proceedings before arbitration board.** A proceeding
4 commenced before an arbitration board before the withdrawal of a
6 state and to which the withdrawing state or any subdivision of
8 that state is a party may not be discontinued or terminated by
 the withdrawal and the board does not lose jurisdiction over any
 of the parties to the proceeding necessary to make a binding
 determination.

10 **§7116. Effect on other laws and jurisdiction**

12 This compact may not be construed to:

14 **1. Fix rates of taxation.** Affect the power of any state or
16 subdivision of that state to fix rates of taxation;

18 **2. Tax or fixed fees.** Apply to any tax or fixed fee
20 imposed for the registration of a motor vehicle or any tax on
22 motor fuel, other than sales tax, provided that the definition of
 "tax" in section 7113, subsection 7 applies for the purposes of
 that section and that the commission's powers of study and
 recommendation pursuant to section 7110 apply;

24 **3. Limit state or local courts.** Withdraw or limit the
26 jurisdiction of any state or local court or administrative
28 officer or body with respect to any person, corporation or other
30 entity or subject matter, except to the extent that that
 jurisdiction is expressly conferred by or pursuant to this
 compact upon another agency or body; and

32 **4. Supersede United States courts.** Supersede or limit the
 jurisdiction of any court of the United States.

34 **§7117. Construction**

36 This compact may be liberally construed to effectuate the
38 purposes of the compact. The provisions of this compact are
40 severable and if any phrase, clause, sentence or provision of
42 this compact is declared to be contrary to the constitution of
44 any state or of the United States or if its applicability to any
46 government, agency, person or circumstance is held invalid, the
 validity of the remainder of this compact and its applicability
 to any government, agency, person or circumstance is not
 affected. If this compact is held contrary to the constitution
 of any state participating in the compact, the compact remains in
 effect for the remaining party states and the state affected.

SUMMARY

2

4 This bill enacts the Multistate Tax Compact into law and
authorizes the State to become a full-voting member of the
Multistate Tax Commission.

6