

MAINE STATE LEGISLATURE

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L.D. 2120

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TAXATION

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**STATE OF MAINE
SENATE
118TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 793, L.D. 2120, Bill, "An Act Concerning Technical Changes to the Tax Laws"

Amend the bill by inserting before section 1 the following:

'Sec. 1. 10 MRSA §1305, as enacted by PL 1997, c. 352, §1, is amended to read:

§1305. Terminal rental adjustment clauses; vehicle leases that are not sales or security interests

Notwithstanding any other provision of law, in the case of motor vehicles or trailers, a transaction does not create a sale or security interest merely because the agreement provides that the rental price is permitted or required to be adjusted upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer. A transaction may be considered a sale for purposes of Title 36.

Further amend the bill in section 1 in subsection 2 in the 3rd line (page 1, line 25 in L.D.) by striking out the following: "tax returns, including quarterly" and inserting in its place the following: '~~tax-returns,-including-quarterly~~'

Further amend the bill by inserting after section 2 the following:

'Sec. 3. 26 MRSA §979-A, sub-§6, ¶J, as amended by PL 1989, c. 654, §3 and affected by §13, is further amended to read:

J. Who substantially participates in the formulation and effectuation of policy in a department or agency or has a major role, other than a typically supervisory role, in the administration of a collective bargaining agreement in a department or agency; or

Sec. 4. 26 MRSA §979-A, sub-§6, ¶K, as amended by PL 1989, c. 654, §4 and affected by §13, is further amended to read:

K. Who is a prisoner employed by a public employer during the prisoner's term of imprisonment, except for prisoners who are in work release or intensive supervision programs; or

Sec. 5. 26 MRSA §979-A, sub-§6, ¶L is enacted to read:

L. Who is employed by a person that has contracted to perform services for the Bureau of Revenue Services.

Further amend the bill by inserting after section 3 the following:

Sec. 4. 36 MRSA §111, sub-§5, as amended by PL 1997, c. 526, §5, is further amended to read:

5. **Tax.** "Tax" means the total amount required to be paid, withheld and paid over, or collected and paid over with respect to estimated or actual tax liability under this Title, including any interest or civil penalty relating thereto. For purposes of sections 171, 175-A and 176-A and 186, "tax" also means any fee, fine, penalty or other obligation owed to the State provided for by law if this obligation is subject to collection by the assessor pursuant to an agreement entered into by the bureau and another agency of the State.

Sec. 5. 36 MRSA §112, sub-§10 is enacted to read:

10. Title. The State Tax Assessor may be referred to as the "executive director" or the "director."

Sec. 6. 36 MRSA §144, sub-§2, as enacted by PL 1995, c. 281, §5, is repealed and the following enacted in its place:

2. Exceptions

A. Subsection 1 does not apply in the case of sales and use taxes imposed by Part 3, estate taxes imposed by chapter 575, income taxes imposed by Part 8 and any other tax imposed by this Title for which a specific statutory refund provision exists.

2 B. For any claim by an individual for credit or a refund of
4 any tax imposed under this Title, the assessor may toll the
6 applicable statute of limitations for a period of up to 3
8 years on the grounds of mental incapacity of the claimant.
10 The period may be tolled only if the mental incapacity
12 existed at a time when the claim could have been timely
14 filed. The limitations period resumes running when the
16 mental incapacity no longer exists. For the purposes of
18 this paragraph, the term "mental incapacity" means the
20 overall inability to function in society that prevents an
22 individual from protecting the individual's legal rights.

24 **Sec. 7. 36 MRSA §151, 2nd ¶**, as repealed and replaced by PL
26 1993, c. 395, §2 and affected by §32, is amended to read:

28 If a request for reconsideration is filed within the
30 specified time period, the State Tax Assessor shall reconsider
32 the assessment or the determination. If the petitioner has so
34 requested in the petition, the State Tax Assessor shall hold an
36 informal conference with the petitioner to receive additional
38 information and to hear arguments regarding the protested
40 assessment or determination. The State Tax Assessor shall give
42 the petitioner 10 working days' notice of the time and place of
44 the conference. The conference may be held with less than 10
46 working days' notice if a mutually convenient time and place can
48 be arranged between the petitioner and the State Tax Assessor.
50 The reconsideration, with or without an informal conference, is
 not an "adjudicatory proceeding" within the meaning of that term
 in the Maine Administrative Procedure Act. If the requested
 reconsideration involves a denial or deemed denial of a refund
 claim, a refund claim with respect to which a conference has been
 requested under section 5280 or an assessment that is paid in
 full or part and the State Tax Assessor fails to mail to the
 taxpayer a decision on the reconsideration within 9 months after
 the reconsideration request was filed, the taxpayer may elect but
 is not obligated to deem the request for reconsideration denied.
 The taxpayer elects to deem the reconsideration denied by filing
 in Superior Court a petition for review of the deemed denial.
 The deemed denial constitutes final agency action and is subject
 to court review as otherwise provided in this section. The
 taxpayer may not make the deemed denial election after either the
 State Tax Assessor's reconsideration decision has been received
 by the taxpayer or the expiration of 9 years following the filing
 of the reconsideration request, whichever occurs first.
 Notwithstanding any other provision of law, any claim for credit
 or refund of any tax imposed under this Title is deemed denied 10
 years after it was filed if the claim has not previously been
 allowed or denied as final agency action. A deemed denial
 constitutes final agency action.

R. & S.

COMMITTEE AMENDMENT "A" to S.P. 793, L.D. 2120

2 **Sec. 8. 36 MRSA §171, sub-§2**, as enacted by PL 1997, c. 526,
§9, is amended to read:

4 **2. Other debts owed to State.** In the case of a fee, fine,
6 penalty or other obligation first owed to the State on or after
8 January 1, 1988 and authorized to be collected by the bureau, the
assessor, within 3 years after ~~administrative-and-judicial-review~~
10 ~~provided-by-law-have-been-exhausted~~ the obligation is first
placed with the bureau for collection, may give the taxpayer
12 notice of the amount to be paid, including any interest and
penalties provided by law, and demand payment of that amount
14 within 10 days of that taxpayer's receipt of notice. The notice
must include a warning that, upon failure of that taxpayer to pay
16 as demanded, the assessor may proceed to collect the amount due
by any collection method authorized by section 175-A or 176-A.

18 **Sec. 9. 36 MRSA §186, first ¶**, as amended by PL 1991, c. 846,
§6, is further amended to read:

20 Any person who fails to pay any tax ~~imposed-under-this~~
22 ~~Title-except-taxes,~~ other than a tax imposed pursuant to chapter
24 105, on or before the last date prescribed for payment is liable
for interest on the tax, calculated from that date and compounded
26 monthly. The State Tax Assessor shall establish annually, by
rule, the rate of interest, which may not exceed the highest
conventional rate of interest charged for commercial unsecured
28 loans by Maine banking institutions on the first business day of
October preceding the calendar year. For purposes of this
30 section, the last date prescribed for payment of tax must be
determined without regard to any extension of time permitted for
32 filing a return. A tax that is upheld on administrative or
judicial review bears interest from the date on which payment
34 would have been due in the absence of review. Any tax, interest
or penalty imposed by this Title that has been erroneously
36 refunded and is recoverable by the State Tax Assessor bears
interest at the above rate from the date of payment of the
38 refund. Interest accrues automatically, without being assessed
by the State Tax Assessor, and is recoverable by the State Tax
40 Assessor in the same manner as if it were a tax assessed under
this Title. If the failure to pay a tax when required is
42 explained to the satisfaction of the State Tax Assessor, the
State Tax Assessor may abate or waive the payment of all or any
44 part of that interest.'

46 Further amend the bill by inserting after section 4 the
following:

48 '**Sec. 5. 36 MRSA §187-B, sub-§5-A** is enacted to read:

50

COMMITTEE AMENDMENT

2 5-A. Electronic funds transfers. Any person required by
3 the assessor to remit taxes by electronic funds transfer that
4 fails to remit electronically is liable for a penalty of the
5 lesser of 5% of the tax due or \$5,000. For purposes of this
6 section, a person fails to remit electronically when:

7 A. Two or more required payments in any consecutive 6-month
8 period are either not made or are made by the person by
9 means other than electronic funds transfer and the person
10 has been notified in writing by the assessor of that
11 person's noncompliance and of the fact that the penalty
12 imposed by this section may be imposed; or

13 B. The person makes 2 or more required electronic payments
14 in any consecutive 6-month period that do not comply with the
15 specifications set forth in a rule issued by the assessor
16 pursuant to section 193.

17 **Sec. 6. 36 MRSA §187-B, sub-§7, as amended by PL 1997, c. 526,**
18 **§14, is further amended to read:**

19 **7. Reasonable cause.** For reasonable cause, the State Tax
20 Assessor shall waive or abate any penalty imposed by subsection
21 1; subsection 2, paragraphs A and B; and subsections 4 and 4-A;
22 and subsection 5-A. Reasonable cause includes, but is not
23 limited to, the following:

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

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 that was due monthly was filed and paid less
33 than one month late and all of the taxpayer's returns and
34 payments during the preceding 12 months were timely;

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

39 **F.** The taxpayer has supplied substantial authority
40 justifying the failure to file or pay; or

COMMITTEE AMENDMENT "A" to S.P. 793, L.D. 2120

2 G. The amount subject to a penalty imposed by subsections
1, 2 and 4-A; and subsection 5-A is de minimis when
4 considered in relation to the amount otherwise properly
paid, the reason for the failure to file or pay and the
6 taxpayer's compliance history.

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

10 Sec. 7. 36 MRSA §191, sub-§1, as enacted by PL 1977, c. 668,
§2, is amended to read:

12
14 1. Basic prohibition. It is unlawful for any public
official or any employee or agent of the bureau to inspect
willfully any return or examine information contained on any
return, for any purpose other than the conduct of official
duties. Except as otherwise provided by law, it shall-be is
18 unlawful for any person who, pursuant to this Title, has been
permitted to receive or view any portion of the original or a
20 copy of any report, return or other information provided pursuant
to this Title to divulge or make known in any manner any
22 information set forth in any of those documents or obtained from
examination or inspection under this Title of the premises or
24 property of any taxpayer. This prohibition applies to both state
tax information and federal tax information filed as part of a
26 state tax return.'

28 Further amend the bill in section 5 in that part designated
"§193." in the first paragraph in the next to last line (page 2,
30 line 35 in L.D.) by striking out the following: "major
substantive" and inserting in its place the following: 'major
32 substantive routine technical'

34 Further amend the bill by inserting after section 5 the
following:

36
38 'Sec. 6. 36 MRSA §582-A, as enacted by PL 1979, c. 666, §18,
is repealed.'

40 Further amend the bill by inserting after section 7 the
following:

42
44 'Sec. 8. 36 MRSA §1752, sub-§18-A, as amended by PL 1995, c.
477, §1, is further amended to read:

46 18-A. **Telephone or telegraph service.** "Telephone or
48 telegraph service" means all telecommunications or telegraph
service, including installation or use of telecommunication or
telegraphic equipment, but not including telecommunications or
50 telegraph service originating or terminating outside this State.

"Telecommunications and or telegraphic equipment" means any 2-way interactive communications device, system or process for transmitting or receiving electromagnetic signals and capable for exchanging audio, data--base database or textual information. ~~Until--January--1,--1988,--telecommunications~~ "Telecommunications service" includes does not include access services provided by a local exchange carrier to an interstate or intrastate interexchange carrier. ~~Notwithstanding subsection 11,--a sale of access services--is--considered--a--retail--sale,--Beginning--January 1,--1988,--unless--extended--by--the--Legislature,--telecommunications service--does--not--include--these--access--services.~~ "Telephone or telegraph service" does not include directory advertising service. This subsection applies to leases entered into prior to October 1, 1996.

Sec. 9. 36 MRSA §1752, sub-§18-B, as enacted by PL 1995, c. 477, §2, is amended to read:

18-B. Telephone or telegraph service. "Telephone or telegraph service" means all telecommunications or telegraph service, including installation of telecommunication or telegraphic equipment, but not including telecommunications or telegraph service originating or terminating outside this State. "Telecommunications and telegraph equipment" means any 2-way interactive communications device, system or process for transmitting or receiving electromagnetic signals and capable of exchanging audio, data--base database or textual information. "Telecommunications and telegraph equipment" does not include computers, except those components of a computer used primarily and directly as a 2-way interactive communications device capable of exchanging audio, data--base database or textual information. ~~Notwithstanding--subsection--11,--a--sale--of--access--services--is--considered--a--retail--sale,--Beginning--January--1,--1988,--unless--extended--by--the--Legislature,--"telecommunications--service"--does--not--include--these--access--services.~~ "Telephone or telegraph service" does not include directory advertising service. This subsection applies to leases entered into on or after October 1, 1996.

Sec. 10. 36 MRSA §1760, sub-§25, as amended by PL 1991, c. 546, §21, is further amended to read:

25. Watercraft sold to nonresidents. Sales of watercraft in this State to nonresidents ~~of watercraft~~, when such craft are either delivered outside the State or delivered in the State to be sailed or transported outside the State immediately upon delivery by the seller; and any sales to nonresidents, under contracts for 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,

R. 4. 8.
COMMITTEE AMENDMENT "A" to S.P. 793, L.D. 2120

2 reconstruction, overhaul or restoration of any such craft to be
3 so delivered, of materials to be incorporated. Unless the craft
4 is present in the State, for a purpose other than temporary
5 storage, for more than 30 days during the 12-month period
6 following its date of purchase or is registered in Maine without
7 also being registered in another state or documented with a
8 location in this State, within 12 months of the date of purchase,
9 the purchaser is exempt from the use tax.'

10 Further amend the bill by striking out all of section 8.

12 Further amend the bill in section 13 in subsection 6 in the
13 3rd line (page 4, line 39 in L.D.) by striking out the
14 following: "either" and inserting in its place the following:
15 '~~either~~'

16 Further amend the bill in section 13 in subsection 6 in the
17 4th line (page 4, line 40 in L.D.) by striking out the
18 following: "sections 2512 to" and inserting in its place the
19 following: '~~sections-2512-to~~'

22 Further amend the bill in section 13 in subsection 6 in the
23 4th line (page 4, line 40 in L.D.) by striking out the
24 following: "2523 and" and inserting in its place the following:
25 'and chapter 357 or'

26 Further amend the bill by striking out all of sections 15 to
27 17.

30 Further amend the bill in section 18 in paragraph B in the
31 4th line (page 6, line 17 in L.D.) by striking out the
32 following: "that" and inserting in its place the following:
33 '~~that~~'

34 Further amend the bill in section 18 in paragraph B in the
35 last line (page 6, line 19 in L.D.) by inserting after the
36 following: "claimed." the following: 'In computing the adjusted
37 basis of the eligible equipment on the date placed in service for
38 the first time in the State, the total allowable depreciation of
39 the equipment for the tax year must be multiplied by a fraction
40 the numerator of which is the number of days that the equipment
41 was in service in the State during the tax year and the
42 denominator of which is the total number of days that the
43 equipment was in service during the tax year.'

44 Further amend the bill by inserting after section 18 the
45 following:

46 'Sec. 19. 36 MRS §5219-M, sub-§1-A is enacted to read:

1-A. Credit allowed. The following persons are allowed a credit as follows.

A. Unless entitlement to the credit is waived by the user pursuant to paragraph B:

(1) A person engaged primarily in high technology activity that purchases and uses eligible equipment in that activity may claim a credit in the amount of that person's investment credit base of the eligible equipment; or

(2) A person engaged primarily in a high technology activity that leases and uses eligible equipment in that activity may claim a credit in the amount of the lease payments made on the eligible equipment in each tax year, except that if the eligible equipment is depreciable by that person for federal income tax purposes, the credit is based on that person's investment credit base of the eligible equipment.

B. When a lessor or sublessor provides the assessor with satisfactory evidence that the lessee or sublessee, respectively, of eligible equipment has waived its right to claim a credit under this section with respect to that equipment:

(1) A person that purchases and leases eligible equipment to another person engaged primarily in high technology activity for use by that person in that activity may claim a credit in the amount of that person's investment credit base of the eligible equipment, net of any lease payments received for the eligible equipment in the taxable year; and

(2) A person that leases and subleases eligible equipment to another person engaged primarily in high technology activity for use by that person in that activity may claim a credit in the amount of the lease payments made on the eligible equipment in each tax year, net of sublease payments received in the taxable year, except that if the eligible equipment is depreciable by that person for federal income tax purposes, the credit is based on that person's investment credit base of the eligible equipment.

Sec. 20. 36 MRSA §5219-M, sub-§§2 and 3, as enacted by PL 1997, c. 557, Pt. B, §10 and affected by §14 and Pt. G, §1, are repealed.'

R. 43.

COMMITTEE AMENDMENT "A" to S.P. 793, L.D. 2120

2 Further amend the bill in section 19 in subsection 6 in the
8th line (page 7, line 1 in L.D.) by striking out the following:
"another group member" and inserting in its place the following:
4 '~~another-group-member~~ other group members'

6 Further amend the bill in section 19 in subsection 6 in the
8th line (page 7, line 1 in L.D.) by striking out the following:
8 "that other" and inserting in its place the following: '~~that
ether~~ the other'

10 Further amend the bill in section 19 in subsection 6 in the
12 9th line (page 7, line 2 in L.D.) by striking out the following:
"corporation" and inserting in its place the following:
14 '~~corporation~~ corporations'

16 Further amend the bill in section 19 in subsection 6 in the
last line (page 7, line 6 in L.D.) by inserting after the
18 following: "5" the following: ', and the rules set forth in
this paragraph for applying the credit to the tax liability of
20 other group members are applicable in the years to which credits
are carried forward'

22 Further amend the bill by striking out all of section 20.

24 Further amend the bill by inserting after section 21 the
26 following:

28 '**Sec. 22. 36 MRSA §5250, sub-§2, ¶¶A and B**, as amended by PL
1995, c. 646, §1, are further amended to read:

30
32 A. An employee is entitled to the same number of
withholding exemptions as the number of withholding
34 exemptions to which the employee is entitled for federal
income tax withholding purposes, unless otherwise provided
by rule. ~~An employer shall rely upon the number of federal
36 withholding exemptions claimed by the employee, except as
specified in paragraph G; and~~

38
40 B. The dollar amount of each exemption withholding
allowance in this State must be ~~the same as that~~ equivalent
to the amount of the personal exemption determined in
42 section 5126 whether the individual is a resident or a
nonresident, ~~and.~~

44
46 **Sec. 23. 36 MRSA §5250, sub-§2, ¶C**, as enacted by PL 1995, c.
646, §1, is repealed.

48 **Sec. 24. 36 MRSA §5250, sub-§4**, as enacted by PL 1995, c. 646,
§2, is repealed.

50

COMMITTEE AMENDMENT

P. of 3.

2 **Sec. 25. 36 MRSA §6164**, as enacted by PL 1979, c. 726, §7, is amended to read:

4 **§6164. Certification**

6 The State Tax Assessor shall annually issue an identification certificate to eligible applicants. The certificate shall be is valid for the ~~15-month~~ 19-month period beginning ~~October~~ August 1st of the ~~current~~ calendar year ~~through December-31st-of-the-following~~ subsequent to the year on which the claim is based.'

12 Further amend the bill by inserting after section 22 the following:

14 **'Sec. 23. 36 MRSA §6758, sub-§2**, as enacted by PL 1995, c. 669, §5, is amended to read:

16 **2. Determination by State Tax Assessor.** On or before June 18 30th of each year, the State Tax Assessor shall determine the 20 employment tax increment of each qualified business for the 22 preceding calendar year. A qualified business may receive up to 24 50% of the employment tax increment generated by that business as 26 determined by the State Tax Assessor, subject to the further limitations in section ~~6753~~ 6754, subsection 2. That amount is referred to as "retained employment tax increment revenues."

28 Further amend the bill in section 23 by striking out all of the first sentence (page 8, lines 1 to 5 in L.D.)

30 Further amend the bill by inserting after section 23 the following:

32 **'Sec. 24. Application.** That section of this Act that repeals 34 Title 36, section 582-A applies to any appeal currently before 36 the State Board of Property Tax Review, but not yet heard by the board. That section of this Act that repeals Title 36, section 38 5204-B applies to tax years beginning on or after August 6, 1997. That section of this Act that amends Title 36, section 40 5228, subsection 2 applies to tax years beginning on or after 42 January 1, 1999. That section of this Act that amends Title 36, section 6164 applies to elderly low-cost drug program cards issued on or after August 1, 1998.'

44 Further amend the bill by relettering or renumbering any 46 nonconsecutive Part letter or section number to read consecutively.

48 Further amend the bill by inserting at the end before the 50 summary the following:

2
4 **FISCAL NOTE**

6 This bill will have no significant net impact on state tax revenues.

8 This bill may increase prosecutions for Class E and Class D crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$86.45 per day per prisoner. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

14 The additional workload, administrative costs and indigent defense costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may also increase General Fund revenue by minor amounts.

22 Extending the time period for validity of a low cost drugs for the elderly card will not have a significant net impact on either the Department of Human Services or the Bureau of Revenue Services.

26
28 **SUMMARY**

30 This amendment makes corrections to the original bill and adds additional technical corrections, clarifications and minor substantive changes.

34 The amendment also adds a fiscal note to the bill.