

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1998

Legislative Document

No. 2240

H.P. 1614

House of Representatives, March 2, 1998

An Act to Provide for Equitable Taxation of All Financial Institutions.

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative TRIPP of Topsham. (GOVERNOR'S BILL)
Cosponsored by Senator MILLS of Somerset.

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

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Sec. 1. 36 MRSA §5122, sub-§1, ¶H, as amended by PL 1997, c. 557, Pt. B, §5 and affected by Pt. G, §1, is further amended to read:

H. The absolute value of the amount of any net operating loss arising from tax years beginning on or after January 1, 1989, but before January 1, 1993, that arises from an S Corporation with total assets for the year of at least \$1,000,000 and that, pursuant to the United States Internal Revenue Code, Section 172, is being carried back for federal income tax purposes to the taxable year by the taxpayer; and

Sec. 2. 36 MRSA §5122, sub-§1, ¶J, as enacted by PL 1997, c. 557, Pt. B, §6 and affected by Pt. G, §1, is amended to read:

J. The amount claimed as a business expense that is included in the investment credit for the high-technology investment tax credit; and

Sec. 3. 36 MRSA §5122, sub-§1, ¶K is enacted to read:

K. For income tax years beginning on or after January 1, 1997, all items of loss, deduction and other expense of a financial institution subject to the tax imposed by section 5206, to the extent that those items are passed through to the taxpayer for federal income tax purposes, including, if the financial institution is an S corporation, the taxpayer's pro rata share and, if the financial institution is a partnership or limited liability company, the taxpayer's distributive share. An addition may not be made under this paragraph for any losses recognized on the disposition by a taxpayer of an ownership interest in a financial institution.

Sec. 4. 36 MRSA §5122, sub-§2, ¶H, as amended by PL 1995, c. 639, §16, is further amended to read:

H. For each taxable year subsequent to the year of the loss, an amount equal to the absolute value of the net operating loss arising from tax years beginning on or after January 1, 1989, but before January 1, 1993, for which federal adjusted gross income was increased in accordance with subsection 1, paragraph H and that pursuant to the Code, Section 172 was carried back for federal income tax purposes, but only to the extent that:

- (1) Maine taxable income is not reduced below zero;

2 (2) The taxable year is within the allowable federal
4 period for carry-over; and

6 (3) The amount has not been previously used as a
8 modification pursuant to this subsection; and

10 **Sec. 5. 36 MRSA §5122, sub-§2, ¶I**, as enacted by PL 1995, c.
12 639, §17, is amended to read:

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

24 **Sec. 6. 36 MRSA §5122, sub-§2, ¶J** is enacted to read:

26 J. For income tax years beginning on or after January 1,
28 1997, all items of income, gain, interest, dividends,
30 royalties and other income of a financial institution
32 subject to the tax imposed by section 5206, to the extent
34 that those items are passed through to the taxpayer for
36 federal income tax purposes, including, if the financial
38 institution is an S corporation, the taxpayer's pro rata
40 share and, if the financial institution is a partnership or
42 limited liability company, the taxpayer's distributive
share. A subtraction may not be made under this paragraph
for:

(1) Income of the taxpayer earned on interest-bearing
or similar accounts of the taxpayer at a financial
institution as a customer of that financial institution;

(2) Any dividends or other distributions with respect
to a taxpayer's ownership interest in a financial
institution; and

(3) Any gain recognized on the disposition by the
taxpayer of an ownership interest in a financial
institution.

44 **Sec. 7. 36 MRSA §5200-A, sub-§1, ¶I**, as amended by PL 1997, c.
46 557, Pt. B, §8 and affected by Pt. G, §1, is further amended to
48 read:

50 I. Interest or dividends on obligations or securities of
any state or of a political subdivision or authority, other
than this State and its political subdivisions and
authorities; and

2 **Sec. 8. 36 MRSA §5200-A, sub-§1, ¶K**, as enacted by PL 1997, c.
3 557, Pt. B, §9 and affected by Pt. G, §1, is amended to read:

4
5 K. The amount claimed as a business expense that is
6 included in the investment credit for the high-technology
7 investment tax credit; and

8 **Sec. 9. 36 MRSA §5200-A, sub-§1, ¶L** is enacted to read:

9
10 L. For income tax years beginning on or after January 1,
11 1997, all items of loss, deduction and other expense of a
12 financial institution subject to the tax imposed by section
13 5206, to the extent that those items are passed through to
14 the taxpayer for federal income tax purposes, including, if
15 the financial institution is an S corporation, the
16 taxpayer's pro rata share and, if the financial institution
17 is a partnership or limited liability company, the
18 taxpayer's distributive share. An addition may not be made
19 under this paragraph for any losses recognized on the
20 disposition by a taxpayer of an ownership interest in a
21 financial institution.

22
23 **Sec. 10. 36 MRSA §5200-A, sub-§2, ¶G**, as amended by PL 1991, c.
24 548, Pt. A, §29, is further amended to read:

25
26 G. Fifty percent of the apportionable dividend income the
27 taxpayer received during the taxable year from an affiliated
28 corporation that is not included with the taxpayer in a
29 Maine combined report, except that this modification must be
30 phased in over 5 years in accordance with the following
31 schedule:

34 Taxable year beginning	34 Subtractable
35 in:	35 dividend income:
36 1989	36 10%
37 1990	37 20%
38 1991	38 30%
39 1992	39 40%
40 1993 or thereafter	40 50%; and

41
42 **Sec. 11. 36 MRSA §5200-A, sub-§2, ¶H**, as amended by PL 1995, c.
43 639, §20, is further amended to read:

44
45 H. For each taxable year subsequent to the year of the
46 loss, an amount equal to the absolute value of the net
47 operating loss arising from tax years beginning on or after
48 January 1, 1989 but before January 1, 1993 and that,
49 pursuant to the Code, Section 172, was carried back for
50 federal income tax purposes, but only to the extent that:

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

10 **Sec. 12. 36 MRSA §5200-A, sub-§2, ¶I** is enacted to read:

12 I. For income tax years beginning on or after January 1,
14 1997, all items of income, gain, interest, dividends,
16 royalties and other income of a financial institution
18 subject to the tax imposed by section 5206, to the extent
20 that those items are passed through to the taxpayer for
22 federal income tax purposes, including, if the financial
institution is an S corporation, the taxpayer's pro rata
share and, if the financial institution is a partnership or
limited liability company, the taxpayer's distributive
share. A subtraction may not be made under this paragraph
for:

24 (1) Income of the taxpayer earned on interest-bearing
26 or similar accounts of the taxpayer at a financial
institution as a customer of that financial institution;

28 (2) Any dividends or other distributions with respect
30 to a taxpayer's ownership interest in a financial
institution; and

32 (3) Any gain recognized on the disposition by the
34 taxpayer of an ownership interest in a financial
institution.

36 **Sec. 13. 36 MRSA §5203-A, sub-§1, ¶A**, as enacted by PL 1991, c.
528, Pt. N, §15 and affected by §17; and enacted by c. 591, Pt.
38 N, §15 and affected by §17, is amended to read:

40 A. "Adjusted federal tentative minimum tax" means federal
42 tentative minimum tax reduced adjusted by that portion of
44 the taxpayer's federal tentative minimum tax that is
46 attributable to income that the states are prohibited under
48 federal law from subjecting to income tax or income, loss or
deductions that the State has excluded from income tax and
items of tax preference and adjustment as specified in the
Code, Sections 56 and 57 attributable to excluded income,
loss or deductions.

50 **Sec. 14. 36 MRSA §5206, first ¶**, as amended by PL 1997, c. 404,
§2 and affected by §10, is further amended to read:

2 A tax is imposed for each calendar year or fiscal year
4 ending during that calendar year upon the franchise or privilege
6 of doing business in this State of every financial institution
8 that has Maine net income or Maine assets and that has a
10 substantial physical presence in this State sufficient to satisfy
12 the requirements of the due process and commerce clauses of the
United States Constitution. A financial institution is subject
to tax under this section even if it is treated as a partnership,
S corporation or entity disregarded as separate from its owner
for federal income tax purposes under the Code. The tax is the
sum of the following:

14 **Sec. 15. 36 MRSA §5206-D, sub-§1**, as enacted by PL 1997, c.
404, §5 and affected by §10, is amended to read:

16 **1. Affiliated group.** "Affiliated group" means a group of 2
18 or more financial institutions in which more than 50% of the
20 voting ~~stock~~ interest of each member ~~corporation~~ ~~or~~ financial
22 institution is directly or indirectly owned by a common owner or
owners, either corporate or noncorporate, or by one or more of
the member financial institutions.

24 **Sec. 16. 36 MRSA §5206-D, sub-§8, ¶¶B and D**, as enacted by PL
1997, c. 404, §5 and affected by §10, are amended to read:

26 B. A bank, savings bank, industrial bank, savings and loan
28 association or any other entity, excluding a credit union as
30 defined in Title 9-B, section 131, subsection 12-A 12 that
accepts deposits that are insured by an agency of the
Federal Government;

32 D. A corporation or other entity more than 50% of the
34 voting ~~stock~~ interest of which is owned, directly or
36 indirectly, by any one or more of the organizations defined
in ~~paragraph A, B or C~~ this subsection or by a credit union
as defined in Title 9-B, section 131, subsection 12.

38 **Sec. 17. 36 MRSA §5206-D, sub-§§12 and 13**, as enacted by PL
40 1997, c. 404, §5 and affected by §10, are amended to read:

42 **12. Maine assets.** "Maine assets" means a financial
44 institution's total end-of-year assets required to be reported
46 pursuant to the laws of the United States on Internal Revenue
48 Service Form 1120, ~~Schedule-L 1120S, 1065~~ or any other Internal
Revenue Service form used to report end-of-year assets or, in the
case of an entity with a single owner that may be disregarded as
an entity separate from its owner pursuant to Internal Revenue
Service regulations, the financial institution's total
50 end-of-year assets determined as if the entity were required to

2 file Internal Revenue Service Form 1065, multiplied by the
fraction obtained pursuant to section 5206-E.

4 **13. Maine net income.** "Maine net income" means, for any
6 taxable year, a financial institution's net income or loss per
books, ~~as required to be reported pursuant to the laws of the~~
United States on Internal Revenue Service Form 1120, ~~Schedule-M,~~
8 ~~Line-1 1120S, 1065 or any other Internal Revenue Service form~~
~~used to report net income or loss per books or, in the case of an~~
10 ~~entity with a single owner that may be disregarded as an entity~~
~~separate from its owner pursuant to Internal Revenue Service~~
12 ~~regulations, the financial institution's net income or loss per~~
~~books determined as if the entity were required to file Internal~~
14 ~~Revenue Service Form 1065, and apportioned to this State under~~
section 5206-E.

16 To the extent that a financial institution derives income from a
18 unitary business carried on by 2 or more members of an affiliated
group, "Maine net income" is determined by apportioning, in
20 accordance with section 5206-E, that part of the net income of
the entire group that derives from the unitary business.

22 **Sec. 18. 36 MRSA §5206-E, sub-§1,** as enacted by PL 1997, c.
24 404, §5 and affected by §10, is amended to read:

26 **1. Formula applicable.** All of a financial institution's
~~net income or loss per books, as required to be reported pursuant~~
28 ~~to the laws of the United States on Internal Revenue Service Form~~
~~1120, Schedule-M, Line-1, Maine net income~~ is apportioned to this
30 State by multiplying the income by a fraction, the numerator of
which is the property factor plus the payroll factor plus 2 times
32 the receipts factor and the denominator of which is 4.

34 **Sec. 19. 36 MRSA §§5206-F and 5206-G** are enacted to read:

36 **§5206-F. Time and place for filing returns and paying tax**

38 The franchise tax return required by section 5220,
subsection 6 must be filed on or before the 15th day of the 3rd
40 month following the end of the financial institution's fiscal
year. A financial institution required to make and file such a
42 return shall, without assessment, notice or demand, pay any tax
due to the State Tax Assessor on or before the date established
44 by this section for filing the return.

46 **§5206-G. Combined reports**

48 The combined report required by section 5220, subsection 6
must include, both in the aggregate and by entity, a list of the
50 net income or loss per books, the property, payroll and receipts

2 in Maine and everywhere as defined in this chapter and the Maine
3 net income of the unitary business. Neither the income nor the
4 property, payroll and receipts of an entity that is not required
5 to file a federal income tax return or whose income is not
6 subject to federal income tax as income to its direct or indirect
7 owners may be included in the combined report.

8 In determining Maine assets or Maine net income for purposes
9 of filing a combined report, intercompany eliminations must be
10 made as necessary to avoid the duplication of income or assets.

11 **Sec. 20. 36 MRSA §5219-G**, as enacted by PL 1991, c. 546, §34,
12 is amended to read:

13 **§5219-G. Tax credits for partners and S corporation shareholders**

14
15 Each partner of a partnership or shareholder of an S
16 corporation is allowed a credit against the tax imposed by
17 chapter 803 in an amount equal to the partner or shareholder's
18 pro rata share of the tax credits described in this chapter,
19 except that in the case of credits attributable to a financial
20 institution subject to tax under chapter 819, the credits are
21 allowable only against the tax imposed by that chapter. A
22 partner's pro rata share must equal the partner's percentage
23 interest in the taxable income or loss of the partnership for
24 federal income tax purposes for the taxable year. The pro rata
25 share of a shareholder of an S corporation must equal the
26 shareholder's percentage share of stock of the S corporation as
27 of the end of the taxable year.

28
29 **Sec. 21. 36 MRSA §5220, sub-§6**, as amended by PL 1997, c. 404,
30 §7 and affected by §10, is further amended to read:

31
32 **6. Certain financial institutions.** Every taxable--entity
33 financial institution, as defined by section 5206-B,--subsectien
34 4,--that is required to file a federal income tax return 5206-D,
35 subsection 8, that has Maine assets as defined by section 5206-D,
36 subsection 12, or that realizes Maine net income as defined by
37 section 5206-D, subsection 13. The State Tax Assessor may allow 2
38 A financial institution that is a member of an affiliated group
39 and that is engaged in a unitary business with one or more other
40 members of that affiliated group shall file, in addition, a
41 combined report in accordance with section 5206-G. Two or more
42 financial institutions that are required to file returns under
43 this subsection, that are members of an affiliated group to and
44 that are engaged in a unitary business shall file a consolidated
45 single return on which the aggregate state tax liability of all
46 those financial institutions is reported, in which case
47 intercompany eliminations must be made as necessary to avoid the
48 duplication of income or assets.
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2 **Sec. 22. 36 MRSA §5227**, as amended by PL 1995, c. 281, §31,
is further amended to read:

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6 **§5227. Time and place for filing returns and paying tax**

8 The income tax return ~~or franchise tax return~~ required by
this Part must be filed on or before the date a federal income
10 taxpayer required to make and file such a return ~~under this Part~~
shall, without assessment, notice or demand, pay any tax due
12 thereon to the assessor on or before the date fixed for filing
such return determined without regard to any extension of time
14 for filing the return.

16 **Sec. 23. 36 MRSA §5241**, as amended by PL 1995, c. 639, §22,
is further amended to read:

18 **§5241. Partnership and S corporation returns**

20 Every partnership and S corporation with a resident partner
22 or shareholder or with income derived from sources in this State,
determined in accordance with the applicable rules of section
24 5142 as in the case of a nonresident individual, shall make a
return for the taxable year setting forth all items of income,
26 gain, loss and deduction, the names and addresses of the
individuals whether residents or nonresidents who would be
28 entitled to share in the net income if distributed and the amount
of the distributive share of each individual and other pertinent
30 information the State Tax Assessor may prescribe. Any return,
statement or other document required of a partnership must be
32 signed by one or more partners. The appropriate return must be
filed on or before the 15th day of the 4th month for partnerships
34 or the 15th day of the 3rd month for S corporations following the
close of each taxable year. For purposes of this section,
36 "taxable year" means a year or period that would be a taxable
year of the partnership or S corporation if it were subject to
38 the tax under this Part. The assessor may elect to waive the
requirement to file a Maine return as established in this section
40 for a tax year and in its place require the partnership or S
corporation to file a copy of its federal partnership or S
42 corporation return. The requirement to file a return as
established in this section does not apply to any partnership or
44 S corporation that is subject to tax under chapter 819.

46 **Sec. 24. Retroactive application.** This Act applies to tax years
beginning on or after January 1, 1997.

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SUMMARY

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6 This bill provides that an entity doing business in this
8 State as a financial institution is subject to the financial
10 institution franchise tax even if it is organized as a so-called
12 "pass-through" entity or as an entity disregarded as separate
 from its owner for federal income tax purposes. The bill also
 makes it clear that, in such cases, the income earned by the
 financial institution is taxed only at the entity level, and is
 not also subject to Maine's individual or corporate income tax.