

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 162

H.P. 131

House of Representatives, January 11, 1999

An Act to Make Minor Substantive Changes in the Tax Laws.

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 "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative GAGNON of Waterville.
Cosponsored by Senator HARRIMAN of Cumberland and
Senator: DOUGLASS of Androscoggin.

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

4 **PART A**

6 **Sec. A-1. 36 MRSA §144, sub-§1**, as enacted by PL 1995, c. 281, §5, is amended to read:

8 **1. Generally.** A taxpayer may request a credit or refund of
10 any tax imposed by this Title within 3 years from the time the
12 return was filed, whether or not the return was timely filed, or
2 3 years from the time the tax was paid, whichever period
14 expires later. Every claim for refund must be submitted to the
16 State Tax Assessor in writing and state the specific grounds upon
18 which it is founded. The taxpayer may in writing request an
informal conference regarding the claim for refund, in which case
the claim for refund is considered a request for reconsideration
of an assessment under section 151.

20 **Sec. A-2. 36 MRSA §187-B, sub-§1**, as amended by PL 1995, c.
657, §7 and affected by §10, is further amended to read:

22 **1. Failure to file return.** Any person who fails to make
24 and file any return required under this Title at or before the
time the return becomes due is liable for one of the following
penalties if the person's tax liability shown on such return or
26 otherwise determined to be due is greater than \$25.

28 A. If the return is filed before or within 30 days after
30 the taxpayer receives from the ~~State-Tax-Assessor~~ assessor a
formal demand that the return be filed, or if the return is
32 not filed but the tax due is assessed by the assessor before
the taxpayer receives from the assessor a formal demand that
34 the return be filed, the penalty is \$25 or 10% of the tax
due, whichever is greater.

36 B. If the return is not filed ~~later than~~ within 30 days
38 after the taxpayer receives from the ~~State--Tax--Assessor~~
assessor a formal demand that the return be filed, the
penalty is 100% of the tax due.

40 C. If the return is not filed and the ~~State-Tax-Assessor~~
42 assessor issues a jeopardy assessment pursuant to section
141, subsection 2, paragraph D, the penalty is 100% of the
44 tax due.

46 **Sec. A-3. 36 MRSA §187-B, sub-§2, ¶A**, as amended by PL 1995,
48 c. 281, §8, is further amended to read:

50 A. Any person who fails to pay, on or before the due date,
any amount shown as tax on any return required under this

2 Title or on any assessment made against the person is liable
for a penalty of 1% of the unpaid tax for each month or
4 fraction of a month during which the failure continues, to a
maximum in the aggregate of 25% of the unpaid tax.

6 **Sec. A-4. 36 MRSA §1752, sub-§15** is amended to read:

8 **15. Storage.** "Storage" includes any keeping or retention in
this State ~~for any purpose, except subsequent use outside of this~~
10 ~~State,~~ of tangible personal property purchased at retail sale.

12 **Sec. A-5. 36 MRSA §1760, sub-§2,** as amended by PL 1997, c.
729, Pt. A, §1, is further amended to read:

14 **2. Certain governmental agencies.** Sales to the State or
16 any political subdivision, or to the Federal Government, or to
any unincorporated agency or instrumentality of either of them or
18 to any incorporated agency or instrumentality of them wholly
owned by them. This exemption does not apply where when title is
20 held or taken as security for any financing arrangement. This
exemption also does not apply to corporations organized under
22 ~~Title IV, Part E~~ of the Farm Credit Act of 1971, 12 United States
Code, Sections 2211 to 2214.

24 **Sec. A-6. 36 MRSA §1760, sub-§80** is enacted to read:

26 **80. Sales of certain printed materials.** Sales of
28 advertising or promotional materials printed on paper and
purchased for the purpose of subsequently transporting such
30 materials outside the State for use by the purchaser thereafter
solely outside the State.

32 **Sec. A-7. 36 MRSA §4064, first ¶,** as amended by PL 1995, c.
34 281, §22, is further amended to read:

36 A tax is imposed upon the transfer of real property situated
in this State, including real property held in trust, and upon
38 the transfer of tangible personal property located in this State,
including tangible personal property held in trust, of every
40 person who at the time of death was not a resident of this State.
The amount of this tax is a sum equal to that proportion of the
42 credit for state death taxes provided by section the Code,
Section 2011 of the Code that the value of Maine real and
44 tangible personal property taxed in this State that qualifies for
the credit bears to the value of the decedent's total federal
46 gross estate. All values are as finally determined for federal
estate tax purposes.

48 **Sec. A-8. Application.** That section of this Part that amends
50 the Maine Revised Statutes, Title 36, section 1752, subsection 15
and that section of this Part that enacts Title 36,

2 section 1760, subsection 80 apply to all taxable periods that are
open for purposes of administrative or judicial review.

4 **PART B**

6 **Sec. B-1. 36 MRSA §5111, sub-§4**, as enacted by PL 1989, c.
596, Pt. J, §1, is amended to read:

8
10 **4. Additional tax.** Additionally, a tax is imposed for each
taxable year beginning on or after January 1, 1989, on the Maine
12 adjusted gross income of every nonresident individual. The
amount of the tax ~~shall equal~~ equals the tax computed under this
14 section and chapter 805, as if the nonresident were a resident,
~~less applicable tax credits other than that provided by section~~
16 ~~5217-A,~~ and multiplied by the ratio of the individual's Maine
adjusted gross income, as defined in section 5102, subsection
18 1-C, paragraph B, to the nonresident's entire federal adjusted
gross income, as modified by section 5122.

20 **Sec. B-2. 36 MRSA §5142, sub-§8** is enacted to read:

22 **8. Minimum taxability threshold.** Minimum taxability
thresholds for nonresidents are as follows.

24
26 A. Compensation for personal services performed in Maine is
Maine-source income, subject to taxation under this Part, if
28 the nonresident taxpayer is present in Maine performing
personal services for more than 20 days during the taxable
30 year and directly earns or derives more than \$6,000 in gross
income during the taxable year in Maine from all sources.

32 B. A nonresident individual who is present for business in
Maine on other than a systematic or regular basis, either
34 directly or through agents or employees, has Maine-source
income derived from or effectively connected with a trade or
36 business in Maine and subject to taxation under this Part
38 only if the nonresident individual earns or derives more
than \$6,000 of gross income during the taxable year from
contractual or sales-related activities.

40
42 **Sec. B-3. 36 MRSA §5200-A, sub-§2, ¶H**, as amended by PL 1997,
c. 746, §11 and affected by §24, is further amended to read:

44 H. For each taxable year subsequent to the year of the
46 loss, an amount equal to the absolute value of the net
operating loss arising from tax years beginning on or after
48 January 1, 1989 but before January 1, 1993 and that,
pursuant to the Code, Section 172, was carried back for
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. B-4. 36 MRSA §5200-A, sub-§2, ¶I**, as enacted by PL 1997,
12 c. 746, §12 and affected by §24, is amended to read:

14 I. For income tax years beginning on or after January 1,
16 1997, all items of income, gain, interest, dividends,
18 royalties and other income of a financial institution
20 subject to the tax imposed by section 5206, to the extent
22 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. 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; and

36 **Sec. B-5. 36 MRSA §5200-A, sub-§2, ¶J** is enacted to read:

38 J. An amount equal to an income tax refund to the taxpayer
40 by this State or another state of the United States that is
42 included in that taxpayer's federal taxable income for the
taxable year under the Code, but only to the extent that:

- 44 (1) Maine net income is not reduced below zero; and
- 46 (2) The amount to be refunded from this State or
48 another state of the United States has not been
previously used as a modification pursuant to this
subsection.

2 If this modification amount results in Maine net income that
4 is less than zero for the taxable year, the negative
6 modification amount may be carried back or forward in the
8 same manner as a net operating loss deduction carry-back or
 carry-forward to a taxable year that is within the allowable
 federal period for a carry-back or carry-forward, subject to
 the above limitations.

10 **Sec. B-6. 36 MRSA §5218**, as amended by PL 1987, c. 772, §40,
12 is repealed and the following enacted in its place:

14 **§5218. Income tax credit for child care expenses**

16 **1. Resident taxpayer.** A resident individual is allowed a
18 credit against the tax otherwise due under this Part in the
20 amount of 25% of the federal tax credit allowable for child and
 dependent care expenses in the same tax year. In no case may
 this credit reduce the Maine income tax to less than zero.

22 **2. Nonresident or part-year resident taxpayer.** A
24 nonresident or part-year resident individual is allowed a credit
26 against the tax otherwise due under this Part in the amount of
28 25% of the federal tax credit allowable for child and dependent
30 care expenses multiplied by the ratio of the individual's Maine
 adjusted gross income, as defined in section 5102, subsection
 1-C, paragraph B, to the nonresident's entire federal adjusted
 gross income, as modified by section 5122. In no case may this
 credit reduce the Maine income tax to less than zero.

32 **Sec. B-7. 36 MRSA §5219-A**, as enacted by PL 1987, c. 504,
 §32, is repealed and the following enacted in its place:

34 **§5219-A. Retirement and disability credit**

36 **1. Resident taxpayer.** A resident individual is allowed a
38 credit against the tax otherwise due under this Part equal to 20%
40 of any credit the taxpayer received for the same taxable year
 under the Code, Section 22. In no case may this credit reduce
 the Maine income tax to less than zero.

42 **2. Nonresident or part-year resident taxpayer.** A
44 nonresident or part-year resident individual is allowed a credit
46 against the tax otherwise due under this Part equal to 20% of any
48 credit the individual received for the same taxable year under
50 the Code, Section 22 multiplied by the ratio of the individual's
 Maine adjusted gross income, as defined in section 5102,
 subsection 1-C, paragraph B, to the nonresident's entire federal
 adjusted gross income, as modified by section 5122. In no case
 may this credit reduce the Maine income tax to less than zero.

2 **Sec. B-8. 36 MRSA §5219-G**, as amended by PL 1997, c. 746,
3 §20 and affected by §24, is repealed and the following enacted in
4 its place:

6 **§5219-G. Tax credits for partners, S corporation shareholders**
7 **and beneficiaries of estates and trusts**

8 **1. Tax credits for partners and S corporation**
9 **shareholders.** Each partner of a partnership or shareholder of an
10 S corporation is allowed a credit against the tax imposed by
11 chapter 803 in an amount equal to the partner's or shareholder's
12 pro rata share of the tax credits described in this chapter,
13 except that in the case of credits attributable to a financial
14 institution subject to tax under chapter 819, the credits are
15 allowable only against the tax imposed by that chapter. A
16 partner's pro rata share must equal the partner's percentage
17 interest in the taxable income or loss of the partnership for
18 federal income tax purposes for the taxable year. The pro rata
19 share of a shareholder of an S corporation must equal the
20 shareholder's percentage share of stock of the S corporation as
21 of the end of the taxable year.

22 **2. Tax credits for beneficiaries of estates and trusts.**
23 Each beneficiary of an estate or trust is allowed a credit
24 against the tax imposed by this Part in an amount equal to the
25 beneficiary's pro rata share of the tax credits described in this
26 chapter. A beneficiary's pro rata share must equal the
27 beneficiary's share of federal distributable net income of the
28 estate or trust. If the estate or trust has no federal
29 distributable net income for the taxable year, the share of each
30 beneficiary in the applicable tax credits is in proportion to
31 that beneficiary's share of the estate or trust income for that
32 year, under local law or the terms of the instrument, which is
33 required to be distributed currently, and any other amounts of
34 income distributed in that year. Any balance of the applicable
35 credits is allocated to the estate or trust.

36 **Sec. B-9. 36 MRSA §5220, sub-§2**, as repealed and replaced by
37 PL 1987, c. 819, §11, is amended to read:

38 **2. Nonresident individuals.** Every nonresident individual
39 who, pursuant to this Part, has a Maine individual income tax
40 liability for the taxable year, except that an individual who
41 does not exceed the threshold contained in section 5142,
42 subsection 8 is not subject to taxation under this Part and need
43 not file a return.

44 **Sec. B-10. 36 MRSA §5278, sub-§§1 and 2**, as enacted by P&SL
45 1969, c. 154, §F, are amended to read:

2 **1. General.** A claim for credit or refund of an overpayment
of any tax imposed by this Part shall must be filed by the
4 taxpayer within 3 years from the time the return was filed,
whether or not the return was timely filed, or 2 3 years from the
6 time the tax was paid, whichever of such periods expires the
later, ~~or if no return was filed by the taxpayer, within 2 years~~
8 ~~from the time the tax was paid.~~ No A credit or refund shall be is
not allowed or may not be made after the expiration of the period
10 of limitation prescribed in this subsection for the filing of a
claim for credit or refund, unless a claim for credit or refund
12 is filed by the taxpayer within such a period.

14 **2. Limit on amount of claim or refund.** If the claim is
filed by the taxpayer during the 3-year period prescribed in
16 subsection 1, the amount of the credit or refund shall may not
exceed the portion of the tax paid within the 3 years immediately
18 preceding the filing of the claim plus the period of any
extension of time for filing the return. ~~If the claim is not~~
20 ~~filed within such 3-year period, but is filed within the 2-year~~
~~period, the amount of the credit or refund shall not exceed the~~
22 ~~portion of the tax paid during the 2 years immediately preceding~~
~~the filing of the claim.~~ If no claim is filed, the any credit or
24 refund shall allowed upon an audit of the taxpayer may not exceed
the amount which that would be allowable under ~~either of the~~
26 ~~preceding sentences, as the case may be, if a claim was filed~~
this subsection, if a claim had been filed by the taxpayer on the
28 date the credit or refund is allowed.

30 **Sec. B-11. Application.** This Part applies to tax years
beginning on or after January 1, 1996.

32
34

SUMMARY

36 This bill makes minor substantive changes to various laws
concerning taxation.