

MAINE STATE LEGISLATURE

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**STATE OF MAINE
SENATE
119TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 360, L.D. 1064, Bill, "An Act to Stimulate Job Creation and Investment in Maine by Amending the Income Tax Apportionment Formula"

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

Sec. 1. 36 MRSA §5210, sub-§§3-A and 4-A are enacted to read:

3-A. High-technology taxpayer. "High-technology taxpayer" means any taxpayer that reports on its federal income tax form and primarily engages during the tax year in an activity corresponding to a principal business activity code that includes any of the following activities:

A. Resin, synthetic rubber and artificial and synthetic fibers and filaments manufacturing;

B. Pharmaceutical and medicine manufacturing;

C. Computer and peripheral equipment manufacturing;

D. Communications equipment manufacturing;

E. Audio and video equipment manufacturing;

F. Semiconductor and other electronic component manufacturing;

G. Navigational, measuring, electromedical and control instruments manufacturing;

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2 H. Magnetic and optical media manufacturing and reproducing;

4 I. Software publishing;

6 J. Online information services;

8 K. Data processing services;

10 L. Custom computer programming services;

12 M. Computer systems design services;

14 N. Computer facilities management services;

16 O. Other computer related services;

18 P. Scientific research and development services; and

20 Q. Medical and diagnostic laboratory services.

22 The State Tax Assessor shall adopt rules to determine those
24 activities that correspond to principal business activity codes
26 that qualify under this subsection. Rules adopted pursuant to
28 this subsection are routine technical rules as defined in Title
30 5, chapter 375, subchapter II-A.

32 4-A. Pulp and paper taxpayer. "Pulp and paper taxpayer"
34 means any taxpayer that reports on its federal income tax form
36 and primarily engages during the tax year in an activity
38 corresponding to a principal business activity code that includes
40 any of the following activities:

42 A. Pulp, paper and paperboard manufacturing; and

44 B. Converted paper product manufacturing.

46 The State Tax Assessor shall adopt rules to determine those
48 activities that correspond to principal business activity codes
50 that qualify under this subsection. Rules adopted pursuant to
52 this subsection are routine technical rules as defined in Title
54 5, chapter 375, subchapter II-A.

56 **Sec. 2. 36 MRSA §5211, sub-§8, as amended by PL 1991, c. 502,**
58 **§1 and affected by §2, is further amended to read:**

60 **8. Formula for apportionment of income to State. All**
62 **Except as provided in subsection 8-A and section 5212, all income**
64 **shall must be apportioned to this State by multiplying the income**
66 **by a fraction, the numerator of which is the property factor plus**

the payroll factor plus twice the sales factor, and the denominator of which is 4.

Sec. 3. 36 MRSA §5211, sub-§8-A is enacted to read:

8-A. Elective formula for high-technology taxpayers and pulp and paper taxpayers. A high-technology taxpayer or a pulp and paper taxpayer may elect to apportion its net income. The election, if made, is irrevocable for a period of 5 successive tax years. All income of a high-technology taxpayer or a pulp and paper taxpayer that elects to apportion income pursuant to this subsection must be apportioned to this State by multiplying the income by the sales factor.

Sec. 4. 36 MRSA §5211, sub-§17, ¶C, as enacted by P&SL 1969, c. 154, §F, is amended to read:

C. The inclusion or substitution of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or

Sec. 5. 36 MRSA §5212 is enacted to read:

§5212. Apportionment of income of mutual fund service providers

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Administration services" includes, but is not limited to, clerical, fund or shareholder accounting; participant record keeping; transfer agency; bookkeeping; data processing; custodial; internal auditing; legal; and tax services performed for a regulated investment company. Services qualify as administration services only if the provider of such service or services during the taxable year also provides, or is affiliated with a person that provides, management or distribution services to the same regulated investment company during the same taxable year.

B. "Distribution services" includes, but is not limited to, the services of advertising, servicing, marketing or selling shares of a regulated investment company. The services of advertising, servicing or marketing shares qualify as distribution services only when the service is performed by a person who is or, in the case of a closed-end company, was either engaged in the services of selling regulated investment company shares or affiliated with a person that is engaged in the service of selling regulated investment company shares. In the case of an open-end company, such

2 service of selling shares must be performed pursuant to a
3 contract entered into pursuant to 15 United States Code,
4 Section 80a-15(b), as amended.

6 C. "Domicile" of a shareholder of a regulated investment
7 company is presumed to be the shareholder's mailing address
8 on the records of the regulated investment company or the
9 mutual fund service provider. If the regulated investment
10 company or the mutual fund service provider has actual
11 knowledge that the shareholder's primary residence or
12 principal place of business is different than the
13 shareholder's mailing address, the presumption does not
14 control. If the shareholder of record is a person that
15 holds the shares of a regulated investment company as
16 depositor for the benefit of a separate account, then the
17 shareholder of record is the contract owner or policyholder
18 of the contracts or policies supported by the separate
19 account, and it is presumed that the domicile of that
20 shareholder of record is the contract owner's or
21 policyholder's mailing address to the extent that the
22 regulated investment company maintains such mailing
23 addresses in the regular course of business. If the
24 shareholder's principal place of business is different than
25 the shareholder's mailing address, the presumption does not
26 control.

28 D. "Management services" includes, but is not limited to,
29 the rendering of investment advice directly or indirectly to
30 a regulated investment company, making determination as to
31 when sales and purchases of securities are to be made on
32 behalf of the regulated investment company or the selling or
33 purchasing of securities constituting assets of a regulated
34 investment company and related activities. Services qualify
35 as management services only when such activity or activities
36 are performed pursuant to a contract with the regulated
37 investment company entered into pursuant to 15 United States
38 Code, Section 80a-15(a), as amended, for a person that has
39 entered into such contract with the regulated investment
40 company or for a person that is affiliated with a person
41 that has entered into such contract with a regulated
42 investment company.

44 E. "Mutual fund service provider" means any taxpayer
45 subject to tax under this Part, other than a financial
46 institution as defined in section 5206-D, subsection 8, that
47 derives more than 50% of its gross income from the direct or
48 indirect provision of management, distribution or
49 administration services to or on behalf of a regulated
50 investment company or from trustees, sponsors and
participants of employee benefit plans that have accounts in
a regulated investment company.

2 F. "Regulated investment company" means a regulated
4 investment company as defined in the Code, Section 851.

6 2. Election of special apportionment of formula for mutual
8 fund service providers. Notwithstanding any other provision of
10 this Title, a mutual fund service provider may elect to apportion
12 its net income by the method provided for in this section. The
14 election, if made, is irrevocable for a period of 5 successive
16 tax years. The net income of an electing mutual fund service
18 provider may be apportioned to this State as follows.

20 A. Net income is multiplied by a fraction, the numerator of
22 which is the Maine receipts during the taxable year and the
24 denominator of which is the total receipts everywhere for
26 the same taxable year.

28 B. For purposes of this subsection, Maine receipts from the
30 direct or indirect provision of management, distribution or
32 administration services to or on behalf of a regulated
34 investment company or from trustees, sponsors and
36 participants of employee benefit plans that have accounts in
38 a regulated investment company are determined by multiplying
40 total receipts for the taxable year from each separate
42 regulated investment company for which the mutual fund
44 service provider performs management, distribution or
46 administration services by a fraction. The numerator of the
48 fraction is the average of the number of shares owned by the
50 regulated investment company's shareholders domiciled in
this State at the beginning of and at the end of the
regulated investment company's taxable year, and the
denominator of the fraction is the average of the number of
the shares owned by the regulated investment company's
shareholders everywhere at the beginning of and at the end
of the regulated investment company's taxable year.

C. Receipts other than from the provision of services
described in paragraph B are Maine receipts if they would
qualify as Maine sales under section 5211, subsection 15 or
16.

3. Combined reporting not applicable. Notwithstanding any
other provision of this Title, a mutual fund service provider
that has elected the apportionment method provided for in this
section is not required to file a combined report, and neither
the income nor the property, payroll or sales of a mutual fund
service provider that has elected the apportionment method
provided for in this section may be included in a combined report
of another taxpayer.

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SUMMARY

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This amendment replaces the bill and implements single sales factor apportionment for pulp and paper and high-technology taxpayers and implements a modified version of single sales factor apportionment for mutual fund service providers, effective for tax years beginning on or after January 1, 2001. The choice to use these special apportionment formulas is at the election of the qualified taxpayer but, once elected by a taxpayer, it must be used for 5 successive tax years. Taxpayers qualifying for the elective single sales factor apportionment formula must still provide property and payroll factor information on the income tax return. This information is included to provide the Bureau of Revenue Services with sufficient information to evaluate the effectiveness of these special formulas.

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This amendment also requires the State Tax Assessor and the Commissioner of Economic and Community Development to provide a report to the Joint Standing Committee on Taxation by January 1, 2002 on the benefits of repealing or modifying the "throwback rule," which includes certain out-of-state sales and sales to the Federal Government in sales factored in Maine's apportionment formula.