

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1277

S.P. 440

In Senate, February 16, 1999

An Act Concerning Technical Changes to the Tax Laws.

(EMERGENCY)

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 GAGNON of Waterville and
Representative: GREEN of Monmouth.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 Whereas, a delay in making technical changes to the tax laws
would interfere with administration of those laws; and

8 Whereas, legislative action is immediately necessary in
order to ensure continued and efficient administration of the tax
laws; and

10
12 Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
14 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
16 safety; now, therefore,

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

20 **Sec. 1. 29-A MRSA §525, sub-§2,** as amended by PL 1995, c. 482,
Pt. B, §§10 and 11 and affected by §22, is further amended to
22 read:

24 **2. Exceptions.** A person operating a vehicle on a public
way, subject to Title 36, chapter 457, or 459 ~~or 463-A~~, ~~must~~
26 shall obtain a fuel use identification decal for that vehicle,
except for:

28 A. A vehicle owned and operated by government agencies;

30 B. A vehicle legally operating with dealer registration
32 plates;

34 C. A recreational vehicle;

36 D. An authorized emergency vehicle registered in another
jurisdiction and operating in response to a declared
38 emergency; or

40 E. A vehicle legally licensed for fuel use reporting under
the International Fuel Tax Agreement.

42
44 **Sec. 2. 29-A MRSA §525, sub-§10,** as amended by PL 1997, c.
776, §21, is further amended to read:

46 **10. Suspension.** On certification by the State Tax Assessor
to the Secretary of State that a person is in violation of Title
48 36, chapter 457, or 459 ~~or 463-A~~, the Secretary of State shall
suspend all fuel use identification decals issued to that
50 person. The Secretary of State shall promptly notify the

2 Department of Public Safety of a suspension, revocation or
reinstatement.

4 Until the State Tax Assessor certifies to the Secretary of State
6 that a person is in compliance, a person who has had decals
8 revoked may not operate a vehicle requiring a decal. To have the
right to operate reinstated, a person must pay a fee of \$30 to
the Secretary of State.

10 **Sec. 3. 29-A MRSA §2458, sub-§2**, as amended by PL 1997, c.
12 776, §§47 to 49, is further amended by amending the last
paragraph to read:

14 The Secretary of State may suspend all the certificates of
16 registration and all the fuel use identification decals issued by
the State to any motor carrier without preliminary hearing upon
18 showing by records or other sufficient evidence that the person
responsible for complying with the payment of reporting
20 provisions of Title 36, chapter 457, ~~or~~ 459 ~~or~~ 463-A has failed
to comply with the provisions in these chapters.

22 **Sec. 4. 31 MRSA §761, sub-§3** is enacted to read:

24 3. Taxation. The taxation of limited liability companies
26 is also governed by Title 36, section 5180.

28 **Sec. 5. 36 MRSA §142**, as amended by PL 1997, c. 504, §2, is
further amended to read:

30 **§142. Cancellation and abatement**

32 The State Tax Assessor may, within 3 years from the date of
34 assessment, or whenever a written request has been submitted by a
taxpayer within 3 years of the date of assessment, cancel any tax
36 that has been levied illegally. In addition, if justice
requires, the ~~State-Tax-Assessor~~ assessor may, with the approval
38 of the Governor, abate within 3 years from the date of
assessment, or whenever a written request has been submitted by a
40 taxpayer within 3 years of the date of assessment, all or any
part of any tax assessed by the ~~State-Tax-Assessor~~ assessor.

42 **Sec. 6. 36 MRSA §151, 3rd ¶**, as repealed and replaced by PL
44 1993, c. 395, §2 and affected by §32, is amended to read:

46 The State Tax Assessor's decision on reconsideration must be
mailed to the taxpayer or the taxpayer's designated
48 representative by certified or registered mail and the decision
must set forth briefly the ~~State--Tax--Assessor's~~ assessor's
50 findings of fact and the basis of decision in each case decided
in whole or in part adversely to the taxpayer. The ~~State-Tax~~

2 Assessee's ~~assessee's~~ assessor's decision on reconsideration constitutes
4 final agency action that is subject to review by the Superior
6 Court in accordance with the Maine Administrative Procedure Act,
8 except that Title 5, sections 11006 and 11007 do not apply. The
Superior Court shall conduct a de novo hearing and make a de novo
determination of the merits of the case. It shall make its own
determination as to all questions of fact or law. The Superior
Court shall enter such orders and decrees as the case may
require. The burden of proof is on the taxpayer.

10 Sec. 7. 36 MRSA §177, as amended by PL 1995, c. 639, §4, is
12 further amended to read:

14 **§177. Trust fund status of certain collections**

16 1. **Generally.** All sales and use taxes collected by a
18 person pursuant to Part 3, all taxes collected by a person under
20 color of Part 3 that have not been properly returned or credited
22 to the persons from whom they were collected, all taxes collected
24 by or imposed on a person pursuant to chapter 451 or 459, all
fees collected pursuant to chapter 719 and all taxes collected by
26 a person pursuant to chapter 827 constitute a special fund in
trust for the State Tax Assessor. The liability for the taxes or
28 fees and the interest or penalty on taxes or fees is enforceable
by assessment and collection, in the manner prescribed in this
Part, against the person and against any officer, director,
30 member, agent or employee of that person who, in that capacity,
is responsible for the control or management of the funds or
finances of that person or is responsible for the payment of that
person's taxes.

32 2. **Responsible individual.** Each person required to collect
taxes which ~~that~~ are designated by subsection 1 as trust funds
34 shall inform the State Tax Assessor, at the time an audit of that
person's trust fund obligation is performed by the State--Tax
36 Assessee ~~assessor~~, of the name and position of the individual who
generally is responsible for the control or management of that
38 person's funds or finances and, if different, the individual who
is specifically responsible for the collection and paying over of
40 those trust funds.

42 3. **Notice to segregate.** Whenever the State Tax Assessor
finds that the payment of the trust funds established under
44 subsection 1 will be jeopardized by delay, neglect or
misappropriation or whenever any person fails to make payment of
46 taxes or file reports as required by Part 3, or by chapter 451,
459 or 827, the State--Tax--Assessee ~~assessor~~ may direct that
48 person to segregate the trust funds from and not to commingle
them with any other funds or assets of that person. ~~Within-5~~
50 ~~days-after-the-mailing-of-notice-of-that-segregation-requirement,~~

2 ~~all~~ All taxes which ~~thereafter~~ that are collected shall after
3 receipt of the notice of the segregation requirement must be paid
4 on account to the ~~State-Tax-Assessor~~ assessor until the taxes are
5 due. The ~~State-Tax-Assessor~~ assessor shall establish in the
6 segregation notice the manner in which the taxes are to be paid
7 ~~to--him~~. The segregation requirement ~~shall--remain~~ remains in
8 effect until a notice of cancellation is given by the ~~State-Tax~~
~~Assessor~~ assessor.

10 **4. Revocation for nonsegregation.** Upon the expiration of
11 the 5-day period designated in subsection 3, if any person who is
12 a "retailer" under Part 3 or a fuel supplier, distributor or
13 importer subject to Part 5 fails to make the required payments on
14 account to the State Tax Assessor, the ~~State--Tax--Assessor~~
assessor may revoke any registration certificate which that has
15 been issued to that person. The revocation ~~shall--be~~ is
16 reviewable in accordance with section 151.

18 **5. Stay of running of period of limitation.** The running of
19 the period of limitation for assessment of trust fund taxes
20 against a responsible officer, director, member, agent or
21 employee of a person ~~who~~ that has collected those taxes is stayed
22 for the period of time, plus 120 days, during which an assessment
23 against that person is subject to administrative or judicial
24 review ~~or--remains--outstanding--because--that--person--is--the--subject~~
~~of--bankruptcy--proceedings--under--the--United--States--Bankruptcy--Code.~~

28 **6. Sale of business; purchaser liable for tax.** If a person
29 liable for any trust fund taxes incurred in the course of
30 operating a business sells the business or stock of goods or
31 quits the business, the person shall make a final return and
32 payment within 15 days after the date of selling or quitting the
33 business. The successor, successors or assignees, ~~if--any,~~ shall
34 withhold a sufficient amount of the purchase money to cover the
35 amount of those taxes, along with applicable interest and
36 penalties, until such time as the former owner produces a receipt
37 from the State Tax Assessor showing that the taxes have been
38 paid, or a certificate from the ~~State--Tax--Assessor~~ assessor
stating that no trust fund taxes, interest or penalties are due.
39 A purchaser who fails to withhold purchase money is personally
40 liable for the payment of the taxes, penalties and interest
41 accrued and unpaid on account of the operation of the business by
42 the former owner, owners or assignors.

44 **Sec. 8. 36 MRSA §186,** as amended by PL 1997, c. 668, §13, is
45 further amended to read:

48 **§186. Interest**

2 Any person who fails to pay any tax, other than a tax
4 imposed pursuant to chapter 105, on or before the last date
6 prescribed for payment is liable for interest on the tax,
8 calculated from that date and compounded monthly. The State Tax
10 Assessor shall establish annually, by rule, the rate of interest,
12 which may not exceed the highest conventional rate of interest
14 charged for commercial unsecured loans by Maine banking
16 institutions on the first business day of ~~October~~ September
18 preceding the calendar year. For purposes of this section, the
20 last date prescribed for payment of tax must be determined
22 without regard to any extension of time permitted for filing a
24 return. A tax that is upheld on administrative or judicial
review bears interest from the date on which payment would have
been due in the absence of review. Any tax, interest or penalty
imposed by this Title that has been erroneously refunded and is
recoverable by the ~~State-Tax-Assessor~~ assessor bears interest at
the above rate from the date of payment of the refund. Interest
accrues automatically, without being assessed by the ~~State-Tax~~
~~Assessor~~ assessor, and is recoverable by the ~~State-Tax-Assessor~~
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
explained to the satisfaction of the ~~State-Tax-Assessor~~ assessor,
the ~~State-Tax-Assessor~~ assessor may abate or waive the payment of
all or any part of that interest.

26 Except as otherwise provided in this Title, and except for
28 taxes imposed pursuant to chapter 105, interest, at the rate
30 determined by the State Tax Assessor for underpayments pursuant
32 to this section, shall must be paid on overpayments of tax from
the date the return listing the overpayment was filed, or the
payment was made, whichever is later.

34 **Sec. 9. 36 MRSA §187-B, sub-§5-A, ¶B**, as enacted by PL 1997,
c. 668, §15, is amended to read:

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

40 **Sec. 10. 36 MRSA §191, sub-§2, ¶V**, as amended by PL 1997, c.
42 703, §3, is further amended to read:

44 V. The disclosure by employees of the Bureau of Revenue
46 Services, to designated representatives of the Department of
Labor, of all information ~~contained on a joint return or~~
48 ~~report submitted to the tax assessor and~~ required by the tax
assessor State Tax Assessor and the Commissioner of Labor
50 for the administration of the taxes imposed by Part 8 and by
Title 26, chapter 13; and

2 **Sec. 11. 36 MRSA §191, sub-§2, ¶W**, as enacted by PL 1997, c.
703, §4, is amended to read:

4
6 W. The disclosure by the State Tax Assessor to the State
Auditor when necessary to the performance of the State
Auditor's official duties; and

8
10 **Sec. 12. 36 MRSA §191, sub-§2, ¶X** is enacted to read:

12 X. The disclosure to the Department of Human Services,
Bureau of Medical Services of information relating to the
administration of the elderly low cost drug program.

14
16 **Sec. 13. 36 MRSA §684, sub-§1**, as enacted by PL 1997, c. 643,
Pt. HHH, §3 and affected by §10, is amended to read:

18 1. **Generally.** The bureau shall furnish to the assessor of
each municipality a sufficient number of printed forms to be
20 filed by applicants for an exemption under this subchapter and
shall determine the content of the forms. A municipality shall
22 provide to its inhabitants reasonable notice of the availability
of application forms. An individual claiming an exemption under
24 this subchapter for the first time shall file the application
form with the assessor or the assessor's representative. For an
26 exemption from taxes based on the status of property on April 1,
1998, the application must be filed by May 15, 1998. For taxes
28 based on the status of property after April 1, 1998, the
application must be filed by ~~April 1st~~ April 30th of the year on
30 which the taxes are based.

32 **Sec. 14. 36 MRSA §1283, 2nd ¶**, as amended by PL 1981, c. 706,
§15, is further amended to read:

34
36 The State Tax Assessor shall, whenever the State acquires
title to ~~such~~ the real estate, cause an inventory to be made of all
38 ~~such~~ the real estate. ~~Such~~ The inventory shall must contain a
description of the real estate, amount of accrued taxes by years
40 and ~~such~~ any other information as ~~may be~~ necessary in the
administration and supervision of ~~such~~ the real estate. A copy
42 of ~~such~~ the inventory shall must be furnished to the Commissioner
of Conservation and the Commissioner of Inland Fisheries and
44 Wildlife prior to the convening of the Legislature. The State
~~Tax-Assessor~~ assessor shall report annually to the Legislature
46 not later than 15 days after it convenes. ~~Such~~ The report shall
must contain a copy of the inventory of real estate then owned by
48 the State and such recommendations as to the disposition of this
real estate as the ~~State--Tax--Assessor--and~~ assessor, the
50 Commissioner of Conservation and the Commissioner of Inland
Fisheries and Wildlife may wish to make.

2 **Sec. 15. 36 MRSA §1752, sub-§9-D** is enacted to read:

4 **9-D. Resident.** "Resident" means an individual.

6 **Sec. 16. 36 MRSA §1752, sub-§18-A**, as amended by PL 1997, c.
668, §22, is repealed.

8 **Sec. 17. 36 MRSA §1752, sub-§18-B**, as amended by PL 1997, c.
10 668, §23, is repealed.

12 **Sec. 18. 36 MRSA §1752, sub-§18-C** is enacted to read:

14 **18-C. Telephone or telegraph service.** "Telephone or
16 telegraph service" means all telecommunications or telegraph
18 service, including installation of telecommunications or
20 telegraphic equipment, but not including telecommunications or
22 telegraph service originating or terminating outside this
24 State. "Telecommunications or telegraphic equipment" means any
26 2-way interactive communications device, system or process for
28 transmitting or receiving signals and capable of exchanging
30 audio, database or textual information. "Telecommunications or
telegraphic 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,
database or textual information. "Telecommunications service"
does not include the sale of 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.

32 **Sec. 19. 36 MRSA §1760, sub-§61**, as enacted by PL 1987, c.
769, Pt. A, §154, is amended to read:

34 **61. Construction contracts with exempt organizations.**
36 Sales of tangible personal property, to a construction
38 contractor, which that are to be physically incorporated in, and
40 become a permanent part of, real property for sale to any
42 organization or government agency provided exemption under this
44 section, except as otherwise provided. ~~In order to qualify for
this exemption, the contractor must have entered into a
construction contract with the exempt organization prior to the
purchase of the tangible personal property.~~

46 **Sec. 20. 36 MRSA §1760, sub-§80** is enacted to read:

48 **80. Sales of property delivered outside this State.** Sales
50 of tangible personal property when the seller delivers the
property to a location outside this State or to the United States
Postal Service, a common carrier or a contract carrier hired by

2 the seller for delivery to a location outside this State,
3 regardless of whether the property is purchased F.O.B. shipping
4 point or other point in this State and regardless of whether
5 passage of title occurs in this State.

6 **Sec. 21. 36 MRSA §1811, last ¶,** as amended by PL 1995, c. 281,
7 §19 and affected by §42, is further amended to read:

8
9 Rental or lease of an automobile for one year or more must
10 be taxed at the time of the lease or rental transaction at 6% 5
11 1/2% of the following: the total monthly lease payment
12 multiplied by the number of payments in the lease or rental, the
13 amount of equity involved in any trade-in and the value of any
14 cash down payment. Collection and remittance of the tax is the
15 responsibility of the person that negotiates the lease
16 transaction with the lessee.

17 **Sec. 22. 36 MRSA §1812, sub-§1, ¶A,** as repealed and replaced
18 by PL 1991, c. 591, Pt. XX, §3 and affected by §§7 and 8, is
19 repealed.
20

21 **Sec. 23. 36 MRSA §1812, sub-§1, ¶A-1** is enacted to read:

22 A-1. If the tax rate is 5 1/2%:

<u>Amount of Sale Price</u>	<u>Amount of Tax</u>
<u>\$0.01 to \$0.09, inclusive</u>	<u>0¢</u>
<u>.10 to .18, inclusive</u>	<u>1¢</u>
<u>.19 to .36, inclusive</u>	<u>2¢</u>
<u>.37 to .54, inclusive</u>	<u>3¢</u>
<u>.55 to .72, inclusive</u>	<u>4¢</u>
<u>.73 to .90, inclusive</u>	<u>5¢</u>
<u>.91 to 1.09, inclusive</u>	<u>6¢</u>
<u>1.10 to 1.27, inclusive</u>	<u>7¢</u>
<u>1.28 to 1.45, inclusive</u>	<u>8¢</u>
<u>1.46 to 1.63, inclusive</u>	<u>9¢</u>
<u>1.64 to 1.81, inclusive</u>	<u>10¢</u>
<u>1.82 to 2.00, inclusive</u>	<u>11¢</u>

39 **Sec. 24. 36 MRSA §2521-A, 3rd ¶,** as amended by PL 1997, c.
40 435, §5, is further amended to read:

41 Insurance companies, captive insurance companies,
42 associations or attorneys-in-fact of a reciprocal insurer with
43 annual tax liability not exceeding \$500 may with approval of the
44 State Tax Assessor file an annual return with payment on the ~~last~~
45 ~~day of January each year or before March 15th~~ covering the prior
46 calendar year.
47
48
49
50

2 **Sec. 25. 36 MRSA §3203, sub-§§5 and 6**, as enacted by PL 1997,
c. 738, §10, are amended to read:

4 **5. Allowance for certain losses of undyed diesel fuel.** An
allowance of not more than 1/4 of 1% from the amount of undyed
6 diesel fuel received by ~~the distributor~~ a supplier, plus 1/4 of
1% on all transfers in vessels, tank cars or full tank truck
8 loads by ~~a distributor~~ the supplier in the regular course of
business from one of the ~~distributor's~~ supplier's places of
10 business to another of the ~~distributor's~~ supplier's places of
business within the State, may be allowed by the assessor to
12 cover the loss through shrinkage, evaporation or handling
sustained by the ~~distributor~~ supplier. The total allowance for
14 these losses must be supported by documentation satisfactory to
the assessor and may not exceed 1/2 of 1% of the receipts by the
16 ~~distributor~~ supplier. The allowance must be calculated on an
annual basis. A further deduction may not be allowed unless the
18 assessor is satisfied upon definite proof submitted to the
assessor that a further deduction should be allowed for a loss
20 sustained through fire, accident or some unavoidable calamity.

22 **6. Allowance for certain losses of propane.** An allowance
of not more than 1% from the amount of propane received by the
24 ~~distributor~~ a supplier, plus 1% on all transfers in vessels, tank
cars or full tank truck loads by ~~a distributor~~ the supplier in
26 the regular course of business from one of the ~~distributor's~~
supplier's places of business to another of the ~~distributor's~~
28 supplier's places of business within the State, may be allowed by
the assessor to cover the loss through shrinkage, evaporation or
30 handling sustained by the ~~distributor~~ supplier. The total
allowance for these losses must be supported by documentation
32 satisfactory to the assessor and may not exceed 2% of the
receipts by the distributor. A further deduction may not be
34 allowed unless the assessor is satisfied upon definite proof
submitted to the assessor that a further deduction should be
36 allowed for a loss sustained through fire, accident or some
unavoidable calamity.

38 **Sec. 26. 36 MRSA §3204-A, sub-§2**, as enacted by PL 1995, c.
40 271, §7, is amended to read:

42 **2. Heating and cooking.** Special fuel delivered into a tank
used solely for heating or cooking purposes, ~~—sold for resale to a~~
44 ~~licensed or registered supplier;~~

46 **Sec. 27. 36 MRSA §3204-A, sub-§2-A** is enacted to read:

48 2-A. Sales for resale. Special fuel sold for resale to a
50 licensed supplier.

2 **Sec. 28. 36 MRSA §3205**, as amended by PL 1985, c. 127, §1, is
further amended to read:

4 **§3205. Registered supplier**

6 Every supplier of special fuel solely making sales only of
7 special dyed fuel, ~~not--subject--to--the--special--fuel--tax--in~~
8 ~~accordance--to--section--3203,--shall--file--an--affidavit--to--that~~
9 ~~effect~~ or taxable special fuel pursuant to section 3203 shall
10 register with the State Tax Assessor on forms prescribed and
11 supplied ~~to him~~ by the assessor. A copy of the ~~affidavit~~
12 registration certificate must be displayed in each place of
business of that supplier.

14 **Sec. 29. 36 MRSA §3207, last ¶**, as enacted by PL 1993, c. 670,
15 §7, is repealed.

18 **Sec. 30. 36 MRSA §3235**, as amended by PL 1985, c. 535, §6, is
further amended to read:

20 **§3235. Tax a debt; recovery; preference**

22 The taxes, interest and penalties imposed by chapters 7,
23 451, 453, and 459 ~~and~~ 463-A, from the time the same ~~shall be~~ are
24 due, ~~shall be~~ are personal debt of the supplier, distributor,
25 importer, motor carrier or user to the State, recoverable in any
26 court of competent jurisdiction in a civil action in the name of
27 the State, and ~~shall~~ have preference in any distribution of the
28 assets of the taxpayer, whether in bankruptcy, insolvency or
29 otherwise. The proceeds of any judgment obtained ~~shall~~ must be
30 paid to the State Tax Assessor.

32 **Sec. 31. 36 MRSA c. 463-A**, as enacted by PL 1983, c. 863, Pt.
33 D, §3, is repealed.

36 **Sec. 32. 36 MRSA §4063, sub-§1**, as amended by PL 1991, c. 546,
37 §27, is further amended to read:

38 **1. Amount.** A tax is imposed upon the transfer of the estate
39 of every person who, at the time of death, was a resident of this
40 State. The amount of this tax is equal to the amount by which the
41 maximum credit for state death taxes determined under the Code,
42 Section ~~2011-B~~ 2011, in this chapter sometimes referred to as the
43 "credit," exceeds the lesser of:

46 A. The aggregate amount of all constitutionally valid
47 estate, inheritance, legacy and succession taxes actually
48 paid to the several states of the United States, other than
this State, in respect of any property owned by that

2 decedent or subject to those taxes as a part of or in
connection with the decedent's estate; or

4 B. An amount equal to such proportion of such allowable
6 credit as the value of properties taxable by other states
bears to the value of the entire federal gross estate
wherever situated.

8
10 **Sec. 33. 36 MRSA §4069**, as enacted by PL 1981, c. 451, §7, is
amended to read:

12 **§4069. Extension of due date for payment of tax**

14 The State Tax Assessor may extend the time for payment of
16 the tax or any part thereof of the tax for a reasonable period of
time not to exceed one year from the date fixed for payment and
18 may grant successive extensions. The aggregate of extensions with
respect to any estate may not exceed 10 years , unless a longer
20 period is called for by a payment arrangement elected pursuant to
section 4069-A. If an extension is granted, he the assessor may
require the taxpayer:

22
24 1. **Bond.** To give a bond to the Treasurer of State in such
amount as the State--Tax--Assessor--deems assessor determines
necessary; or

26
28 2. **Other security.** To deposit with the Treasurer of State
bonds or other negotiable obligations of governmental entities
30 with an aggregate value sufficient to adequately secure payment
of the tax.

32 **Sec. 34. 36 MRSA §4069-A** is enacted to read:

34 **§4069-A. Extension of time for payment of estate tax when**
36 **estate consists largely of interest in closely held**
business

38 1. **Deferred payment arrangement.** If the Internal Revenue
40 Service has approved a federal estate tax deferral and
installment payment arrangement under Section 6166 of the Code,
42 the executor may elect a similar deferred payment arrangement
under this section for payment of the tax imposed by this
chapter, subject to acceptance by the State Tax Assessor.

44
46 2. **Time and manner of election; rejection by State Tax**
Assessor. An election under this section may be made by
48 attaching to a timely filed Maine estate tax return, in addition
to a copy of the federal estate tax return as required by section
50 4068, copies of all documentation required by the Internal
Revenue Service and submitted in support of the federal payment

2 deferral. Documentation submitted to the assessor must clearly
3 indicate the amount of Maine estate tax and interest to be paid
4 in installments; the number of separate installments; and the due
5 date of each installment payment. The assessor may reject the
6 election if the terms of the proposed arrangement are
7 substantially different from the terms of the federal
8 arrangement. Any election not rejected in writing by the
9 assessor within 60 days after the election is made is considered
10 accepted.

11 3. Interest and penalties. The amount of Maine estate tax
12 deferred under this section is subject to interest pursuant to
13 section 186. Interest payable on the unpaid tax attributable to
14 a 5-year deferral period pursuant to Section 6166 of the Code
15 must be paid annually. Interest payable on any unpaid tax
16 attributable to any period after the 5-year deferral period must
17 be paid annually at the same time as, and as part of, each
18 installment payment of the tax. If any payment of principal or
19 interest under this section is not made on or before the due
20 date, the penalties provided by section 187-B apply.

21 Sec. 35. 36 MRSA §4365, as amended by PL 1997, c. 643, Pt. T,
22 §3 and affected by §6 and c. 750, Pt. D, §1, is repealed and the
23 following enacted in its place:

24 **§4365. Rate of tax**

25 A tax is imposed on all cigarettes imported into this State
26 or held in this State by any person for sale at the rate of 37
27 mills per cigarette. Payment of the tax is evidenced by the
28 affixing of stamps to the packages containing the cigarettes. In
29 the case of an individual who purchases unstamped cigarettes in a
30 quantity greater than 2 cartons from a person other than a
31 licensed distributor or dealer, the tax may be assessed directly
32 by the State Tax Assessor within 3 years from the date of the
33 purchase.

34 Sec. 36. 36 MRSA §4365-D, as amended by PL 1997, c. 643, Pt.
35 T, §4 and affected by §6 and c. 750, Pt. D, §1, is repealed.

36 Sec. 37. 36 MRSA §4697, as amended by PL 1997, c. 706, §10
37 and affected by §17, is further amended to read:

38 **§4697. Reports of production and payment of tax**

39 Every packer shall, on or before the last day of each month,
40 report to the State Tax Assessor the quantity of sardines,
41 kippers, steaks or other canned herring products packed by the
42 packer during the preceding calendar month, on forms furnished by
43 the State--Tax--Assessor assessor, and pay to the State--Tax
44 assessor.

2 Assessor ~~assessor~~ the tax of 15¢ per case on all sardines
reported as packed and ~~10¢~~ 15¢ per case on all kippers, steaks or
4 other canned herring products reported as packed. If the State
Tax-Assessor ~~assessor~~ determines that overpayment of tax has been
6 made, the State-Tax-Assessor ~~assessor~~ shall make a refund. In
8 making additional assessment or refund determinations, the State
Sardine Council concerning the quantity of sardines, kippers,
10 steaks or other canned herring products packed in each sardine
plant that is for sale and suitable for human consumption. Any
12 packer may pay to the State-Tax-Assessor ~~assessor~~ in advance a
sum of money based on an estimate of the packer's tax for a given
14 number of months and this sum is a credit against future monthly
reports of that packer.

16 **Sec. 38. 36 MRSA §5102, sub-§10**, as amended by PL 1991, c.
546, §33, is further amended to read:

18 **10. Taxable corporation.** "Taxable corporation" means, for
20 any taxable year, a corporation ~~which that~~, at any time during
that taxable year, realized Maine net income. "Taxable
22 corporation" includes any S corporation that is required by
section 5241 to file a return and that is subject to federal tax
24 under the Code, Section 1374 and 1375.

26 **Sec. 39. 36 MRSA §5122, sub-§2, ¶E**, as repealed and replaced
by PL 1989, c. 880, Pt. G, §2, is amended to read:

28 E. Pick-up contributions paid to the taxpayer by the Maine
30 State Retirement System or distributed as the result of a
rollover, whether or not included in federal adjusted gross
32 income, that have been previously taxed under this Part;

34 **Sec. 40. 36 MRSA c. 814** is enacted to read:

36 **CHAPTER 814**

38 **LIMITED LIABILITY COMPANIES**

40 **§5180. Taxation of limited liability companies**

42 **1. Classified as partnership.** For purposes of taxation
pursuant to this Part, a limited liability company formed under
44 Title 31, chapter 13 or qualified to do business in this State as
a foreign limited liability company is classified as a
46 partnership, unless classified otherwise for federal income tax
purposes, in which case the limited liability company is
48 classified in the same manner as it is classified for federal
income tax purposes.

50

2 **2. Taxation.** The taxation of limited liability companies
is also governed by Title 31, section 761.

4 **Sec. 41. 36 MRSA §5206-D, sub-§8, ¶B,** as amended by PL 1997,
c. 746, §16 and affected by §24, is further amended to read:

6 B. A bank, savings bank, industrial bank, savings and loan
8 association or any other entity, excluding a credit union
authorized to do business in this State as defined in Title
10 9-B, section 131, subsection 12-A, that accepts deposits
that are insured by an agency of the Federal Government;

12 **Sec. 42. 36 MRSA §5206-D, sub-§§12 and 13,** as amended by PL
14 1997, c. 746, §17 and affected by §24, are further amended to
read:

16 **12. Maine assets.** "Maine assets" means a financial
18 institution's total end-of-year assets required to be reported
pursuant to the laws of the United States on Internal Revenue
20 Service Form 1120, 1120S, 1065 or any other Internal Revenue
Service form used to report end-of-year assets or, in the case of
22 an entity with a single owner that may be disregarded as an
entity separate from its owner pursuant to Internal Revenue
24 Service regulations, the financial institution's total
end-of-year assets determined as if the entity were required to
26 file Internal Revenue Service Form 1065, multiplied by the
fraction obtained pursuant to section 5206-E. In the case of a
28 financial institution that is a qualified subchapter S subsidiary
as defined by the Internal Revenue Code, Section 1361, the
30 financial institution's "Maine assets" means total end-of-year
assets determined as if the entity were required to file Internal
32 Revenue Service Form 1120S, multiplied by the fraction obtained
pursuant to section 5206-E.

34 **13. Maine net income.** "Maine net income" means, for any
36 taxable year, a financial institution's net income or loss per
books required to be reported pursuant to the laws of the United
38 States on Internal Revenue Service Form 1120, 1120S, 1065 or any
other Internal Revenue Service form used to report net income or
40 loss per books or, in the case of an entity with a single owner
that may be disregarded as an entity separate from its owner
42 pursuant to Internal Revenue Service regulations, the financial
institution's net income or loss per books determined as if the
44 entity were required to file Internal Revenue Service Form 1065,
and apportioned to this State under section 5206-E. In the case
46 of a financial institution that is a qualified subchapter S
subsidiary as defined by the Internal Revenue Code, Section 1361,
48 the financial institution's "Maine net income" means a financial
institution's net income or loss per books determined as if the

2 entity were required to file Internal Revenue Service Form 1120S
3 and apportioned to this State under section 5206-E.

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

10 **Sec. 43. 36 MRSA §5206-D, sub-§22**, as enacted by PL 1997, c.
11 404, §5 and affected by §10, is amended to read:

12 **22. Unitary business.** "Unitary business" means a business
13 activity that is characterized by unity of ownership, functional
14 integration, centralization of management ~~or~~ and economies of
15 scale.

18 **Sec. 44. 36 MRSA §5215, sub-§3, ¶B**, as amended by PL 1997, c.
19 761, §3, is further amended to read:

20 B. With payroll records and reports substantiating that at
21 least 100 new jobs attributable to the operation of property
22 considered to be qualified investment were created in the
23 24-month period following the date the property was placed
24 in service. To assess the continuing nature of the jobs,
25 the taxpayer must demonstrate that the new jobs credit base
26 is at least \$700,000 for the taxable year of the qualified
27 federal credit ~~or~~ for either of the next 2 calendar years.
28 The \$700,000 must be adjusted proportionally for any change
29 in Title 26, section 1043, subsection 2 wages from \$7,000.
30 With respect to new jobs created after August 1, 1998, but
31 before October 1, 2001, the employer must also demonstrate
32 that the qualifying jobs are covered by a retirement program
33 subject to the Employee Retirement Income Security Act of
34 1974, 29 United States Code, Sections 101 to 1461, as
35 amended; that group health insurance is provided for
36 employees in those positions; and that the wages for those
37 positions, calculated on a calendar year basis, are greater
38 than the average per capita income in the labor market area
39 in which the employee is employed; and

42 **Sec. 45. 36 MRSA §5215, sub-§3, ¶C**, as enacted by PL 1997, c.
43 761, §4, is repealed.

44 **Sec. 46. 36 MRSA §5219-M, sub-§1, ¶D** is enacted to read:

45 D. "Primarily" means more than 50% of the time.

48 **Sec. 47. 36 MRSA §5219-O, sub-§1**, as enacted by PL 1997, c.
49 775, §1, and affected by §2, is amended to read:

2 **1. Credit allowed.** A taxpayer constituting an employing
4 unit that employs fewer than 5 low-income employees is allowed a
6 credit to be computed as provided in this section against the tax
8 imposed by this Part, subject to the limitations contained in
10 subsections 3 and 4. The credit equals the lesser of 20% of
12 dependent health benefits paid under a health benefit plan during
14 the taxable year for which the credit is allowed or \$125 per
employee with dependent health benefits coverage. A taxpayer who
received a credit under this section in the preceding year and
whose number of low-income employees is 5 or more may continue to
receive the credit for 2 years after the last year in which the
number of low-income employees was fewer than 5.

16 **Sec. 48. 36 MRSA §5219-P, sub-§2**, as reallocated by RR 1997,
c. 2, §62, is amended to read:

18 **2. Credit allowed.** A taxpayer is allowed a credit against
20 the tax imposed by this Part in an amount equal to the qualifying
22 percentage of expenditures paid or incurred by the taxpayer for
24 the construction or installation of or improvements to any
filling or charging station in this State for the purposes of
providing clean fuels to the general public for use in motor
vehicles, as calculated pursuant to subsection 4.

26 **Sec. 49. 36 MRSA §5228, sub-§3**, as amended by PL 1991, c. 591,
Pt. DDD, §1 and affected by §2, is further amended to read:

28 **3. Amount of estimated tax to be paid.** Every person
30 required to make payment of estimated tax is liable for an
32 estimated tax which that is no less than the smaller of the
34 following; ~~however,~~ large corporations as defined in the United
States Internal Revenue Code, Section ~~6655(q)~~ 6655(g), are
36 subject only to paragraph B, except as provided in subsection 5,
paragraph C:

38 A. An amount equal to the preceding year's state income tax
40 liability, if that preceding year was a taxable year of 12
months; or

42 B. An amount equal to 90% of the income tax liability for
44 the current year determined without taking into account the
46 current year's investment tax credit set forth in section
5219-E, except that for farmers and persons who fish
commercially, this amount is 66 2/3% of the tax liability
for the current year.

48 **Sec. 50. 36 MRSA §5228, sub-§5, ¶C**, as enacted by PL 1991, c.
50 9, Pt. DD, §3 and affected by §4, is amended to read:

2 C. If the taxpayer is a large corporation as defined in the
United States Internal Revenue Code, Section ~~6655(e)~~
4 6655(g), then the corporation may elect to determine its
first required installment for any taxable year pursuant to
6 subsection 3, paragraph A. ~~However,--if~~ If the corporation
8 so elects, its 2nd required installment for the taxable year
must equal the total amount of estimated tax for the first 2
10 installments for the taxable year pursuant to subsection 3,
paragraph B, less the amount of the first installment for
the taxable year allowed pursuant to subsection 3, paragraph
A.

12 **Sec. 51. 36 MRSA §5228, sub-§9**, as enacted by PL 1985, c. 691,
14 §§35 and 48, is amended to read:

16 **9. Individual underpayment of 4th installment.** If, on or
before January 31st of the following taxable year, an individual,
18 not including a corporation, files a return and pays in full the
individual's tax liability for the taxable year of the return,
20 then no penalty may be imposed with respect to any underpayment
of the 4th required installment for the year.

22 **Sec. 52. 36 MRSA §5255-B**, as repealed and replaced by PL
24 1987, c. 769, Pt. A, §161, is amended to read:

26 **§5255-B. Certain items of income under the United States**
Internal Revenue Code

28 Any person maintaining an office or transacting business
within this State and who is required to deduct and withhold a
30 tax on items of income under the Code, other than wages subject
to withholding as provided in section 5250 or sales of real
32 estate subject to withholding as provided in section 5250-A,
shall deduct and withhold from such items to the extent they
34 constitute income which that is not excluded from taxation under
Maine law, a tax equal to 5% thereof of the income, unless
36 withholding pursuant to the Code is based on other than a flat
rate amount. In that event, the State's withholding procedure
38 should estimate taxable income using the same approach to
exemptions as the Code and the amount of tax to be withheld
40 should be calculated in accordance with withholding methods
prescribed pursuant to section 5250.

42 **Sec. 53. 36 MRSA §6201, sub-§9**, as amended by PL 1993, c. 395,
44 §28, is further amended to read:

46 **9. Income.** "Income" means the sum of Maine adjusted gross
48 income determined in accordance with Part 8, the amount of
capital gains excluded from adjusted gross income, the absolute
50 value of the amount of trade or business loss, net operating loss

2 carry-over, capital loss, rental loss, farm loss, partnership or
3 S Corporation loss included in adjusted gross income, alimony,
4 inheritance, life insurance proceeds paid on death of insured,
5 nontaxable lawsuit rewards, such as slander, libel and pain and
6 suffering, excluding reimbursements such as medical and legal
7 expenses associated with the case, support money, nontaxable
8 strike benefits, the gross amount of any pension or annuity,
9 including railroad retirement benefits, all payments received
10 under the federal Social Security Act, state unemployment
11 insurance laws, veterans' disability pensions, nontaxable
12 interest received from the Federal Government or any of its
13 instrumentalities, interest or dividends on obligations or
14 securities of this State and its political subdivisions and
15 authorities, workers' compensation and the gross amount of "loss
16 of time" insurance, cash public assistance and relief, but not
17 including relief granted under this chapter. Income does not
18 include the first \$5,000 in the proceeds from a life insurance
19 policy, whether paid in a lump sum or in the form of an annuity.
20 Income does not include a rollover from an individual retirement
21 account, pension or annuity fund or plan to an individual
22 retirement account, pension or annuity fund or plan even if the
23 amount of the rollover is includable in Maine adjusted gross
24 income. Income also does not include gifts from nongovernmental
25 sources or surplus foods or other relief in kind supplied by a
26 governmental agency.

27 **Sec. 54. Application.** That section of this Act that enacts
28 Title 36, section 1760, subsection 80 applies to all taxable
29 periods that are open for purposes of assessment or for
30 administrative or judicial review.

31 **Sec. 55. Retroactive application.** Those sections of this Act
32 that amend Maine Revised Statutes, Title 36, section 5215,
33 subsection 3, paragraph B and repeal Title 36, section 5215,
34 subsection 3, paragraph C are retroactive to July 9, 1998.
35

36 **Sec. 56. Application.** That section of this Act that amends
37 the Maine Revised Statutes, Title 36, section 5122, subsection 2,
38 paragraph E, applies to tax years beginning on or after January
39 1, 1996. That section of this Act that amends Title 36, section
40 5206-D, subsections 12 and 13, apply to tax years beginning on or
41 after January 1, 1997. That section of this Act that amends
42 Title 36, section 6201, subsection 9, applies to applications
43 filed on or after August 1, 1998.
44

45 **Emergency clause.** In view of the emergency cited in the
46 preamble, this Act takes effect when approved.
47
48

SUMMARY

2

4 This bill makes technical corrections, clarifications and
minor substantive changes to various laws concerning taxation and
also repeals several obsolete tax provisions.

6