

# MAINE STATE LEGISLATURE

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L.D. 1883

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

COMMITTEE AMENDMENT "B" to S.P. 661, L.D. 1883, Bill, "An Act to Ensure that Certain Land Transfers Accomplished through Stock Transfers are not Exempt from the Transfer Tax"

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 §4641, sub-§§1-A and 2-A are enacted to read:**

**1-A. Controlling interest.** "Controlling interest" means:

A. In the case of a corporation, either 50% or more of the total combined voting power of all classes of stock of the corporation entitled to vote or 50% of the capital, profits or beneficial interest in the voting stock of the corporation; and

B. In the case of a partnership, association, trust or other entity, 50% or more of the capital, profits or beneficial interest in the partnership, association, trust or other entity.

**2-A. Real property.** "Real property" means land or anything affixed to land. "Real property" includes, but is not limited to, improvements such as buildings, mobile homes other than stock-in-trade, lines of electric light and power companies, pipelines and other things constructed or situated on land when the owner of the improvements is not the landowner.

**Sec. 2. 36 MRSA §4641, sub-§3, as amended by PL 1999, c. 478, §3, is further amended to read:**

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2           3.    **Value.** "Value" means the amount of the actual  
3           consideration ~~therefor~~ for the real property, except that in the  
4           case of a gift, or a contract or deed with nominal consideration  
5           or without stated consideration, or in the case of the transfer  
6           of a controlling interest in an entity with a fee interest in  
7           real property when the consideration for the real property can  
8           not be determined, "value" is to be based on the estimated price  
9           a property will bring in the open market and under prevailing  
10          market conditions in a sale between a willing seller and a  
11          willing buyer, both conversant with the property and with  
12          prevailing general price levels.

13          "Value" does not include the amount of consideration attributable  
14          to vacation exchange rights, vacation services or club  
15          memberships or the costs associated with those rights, services  
16          or memberships. Upon request of a municipal assessor or the  
17          State Tax Assessor, a developer of a time-share estate, as  
18          defined in Title 33, section 591, subsection 7, or an association  
19          of time-share estate owners shall provide an itemized schedule of  
20          fees included in the sales price of a time-share estate.

21          **Sec. 3. 36 MRSA §4641-A**, as repealed and replaced by PL 1993,  
22          c. 398, §2, is repealed and the following enacted in its place:

23          **§4641-A. Rate of tax; liability for tax**

24                 **1. Deeds.** A tax is imposed on each deed by which any real  
25                 property in this State is transferred.

26                         A. The rate of tax is \$2 for each \$500 or fractional part  
27                         of \$500 of the value of the real property transferred.

28                         B. The tax is imposed 1/2 on the grantor and 1/2 on the  
29                         grantee.

30                 **2. Transfer of controlling interest in entity with interest**  
31                 **in real property.** A tax is imposed on the transfer or  
32                 acquisition within any 12-month period of a controlling interest  
33                 in any entity with a fee interest in real property in this State.

34                         A. The rate of the tax is \$2 for each \$500 or fractional  
35                         part of \$500 of the value of the real property owned by the  
36                         entity and located in this State.

37                         B. The tax is imposed 1/2 on the transferor and 1/2 on the  
38                         transferee, but if the transfer or acquisition is not  
39                         reported to the register of deeds in the county or counties  
40                         in which the property is located, and the tax is not paid  
41                         within 30 days of the completion of the transfer or  
42                         acquisition.

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2 acquisition, the transferor and the transferee are jointly  
3 and severally liable for the full amount.

4 C. If a controlling interest is acquired by a series of  
5 transfers, each transferor is liable for its proportional  
6 share of tax based on the value of the property on the date  
7 of sale.

8  
9 **Sec. 4. 36 MRSA 4641-B**, as amended by PL 1997, c. 759, §1 and  
10 affected by §2, is repealed and the following enacted in its  
11 place:

12 **§4641-B. Collection**

13  
14 **1. Transfer of real property by deed.** The State Tax  
15 Assessor shall provide for the collection of the tax on the  
16 transfer of real property by deed by each register of deeds, and  
17 for that purpose may provide for the installation of a meter  
18 machine in each registry office. When any deed is offered for  
19 recordation, the register of deeds shall ascertain and compute  
20 the amount of tax due on the transfer and shall collect that  
21 amount. The amount of tax must be computed on the value of the  
22 property as set forth in the declaration of value prescribed by  
23 section 4641-D. Payment of tax must be evidenced by affixing  
24 such indicia of payment as prescribed by the State Tax Assessor  
25 to the declaration of value provided for in section 4641-D.

26  
27 **2. Transfer or acquisition of controlling interest in**  
28 **entity with fee interest in real property.** A person transferring  
29 or acquiring a controlling interest in an entity with a fee  
30 interest in real property for which no deed is given shall report  
31 the transfer or acquisition to the register of deeds in the  
32 county or counties in which the real property is located within  
33 30 days of the transfer or acquisition on a return in the form of  
34 an affidavit furnished by the State Tax Assessor. The return  
35 must be signed by both the transferor and the transferee and must  
36 be accompanied by payment of the tax due. When the real property  
37 is located in more than one county, the tax must be divided  
38 proportionally among the counties in the same proportion in which  
39 the real property value is distributed among the counties.  
40 Dispute between 2 or more counties as to the proper amount of tax  
41 due to them as a result of a particular transaction must be  
42 decided by the State Tax Assessor upon the written petition of an  
43 official authorized to act on behalf of any such county.

44  
45 **3. Disposition of funds.** Each register of deeds shall, on  
46 or before the 10th day of each month, pay over to the State Tax  
47 Assessor 90% of the tax collected pursuant to this section during  
48 the previous month. The remaining 10% must be retained for the  
49 county by the register of deeds and accounted for to the county  
50 treasurer as reimbursement for services rendered by the county in  
51 collecting the tax. If the tax collected is not paid over by the  
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2 10th day of the month, the State Tax Assessor may impose interest  
3 pursuant to section 186.

4 4. Distribution of State's share of proceeds. The State  
5 Tax Assessor shall pay all net receipts to the Treasurer of  
6 State, who shall credit 1/2 of the revenue to the General Fund  
7 and who shall monthly pay the remaining 1/2 to the Maine State  
8 Housing Authority, which shall deposit the funds in the Housing  
9 Opportunities for Maine Fund created in Title 30-A, section 4853.

10 5. Dispute regarding amount. In the event of a dispute as  
11 to the correct amount of tax, the individual seeking to record  
12 the deed or a party to the transfer of a controlling interest may  
13 request the State Tax Assessor to determine the correct amount of  
14 tax to be paid.

15 **Sec. 5. 36 MRSA §4641-C, first ¶,** as amended by PL 1993, c.  
16 398, §4, is further amended to read:

17 The following deeds are exempt from the tax imposed by this  
18 chapter:

19 **Sec. 6. 36 MRSA §4641-C, sub-§18,** as amended by PL 1999, c.  
20 638, §46, is further amended to read:

21 **18. Limited liability company deeds.** Deeds to a limited  
22 liability company from a corporation, a general or limited  
23 partnership or another limited liability company, when the  
24 grantor or grantee owns an interest in the limited liability  
25 company in the same proportion as the grantor's or grantee's  
26 interest in or ownership of the real estate being conveyed; and

27 **Sec. 7. 36 MRSA §4641-C, sub-§19,** as amended by PL 1999, c.  
28 638, §47, is further amended to read:

29 **19. Change in identity or form of ownership.** Any transfer  
30 of real property, whether accomplished by deed, conversion,  
31 merger, consolidation or otherwise, if it consists of a mere  
32 change in identity or form of ownership of an entity. This  
33 exemption is limited to those transfers where no change in  
34 beneficial ownership is made and may include transfers involving  
35 corporations, partnerships, limited liability companies, trusts,  
36 estates, associations and other entities.

37 **Sec. 8. 36 MRSA §4641-C, sub-§§20 and 21** are enacted to read:

38 20. Controlling interests. Transfers of controlling  
39 interests in an entity with a fee interest in real property if  
40 the transfer of the real property would qualify for exemption,  
41 under any provision of this section other than subsections 7, 8  
42 and 9.

or 10, if accomplished by deed of the real property between the parties to the transfer of the controlling interest; and

**21. Certain financial institutions.** Transfers of property by means of transfer of a controlling interest in a financial institution, as defined in section 5206-D, subsection 8, if the property was acquired by the financial institution by foreclosure on a mortgage or other loan and is held for resale.

**Sec. 9. 36 MRSA §4641-D, first ¶,** as amended by PL 1993, c. 398, §5, is further amended to read:

Any--deed,--except Except as otherwise provided in this section, must any deed, when offered for recording, and any report of a transfer of a controlling interest must be accompanied by a statement or declaration prepared in duplicate and signed, subject to the penalties of perjury, by the parties to the transaction or their authorized representatives, declaring the value of the property transferred and indicating the taxpayer identification numbers of the grantor and grantee. The statement or declaration with regard to a transfer by deed must include evidence of compliance with section 5250-A and reference to the appropriate tax map and parcel number unless no tax map exists that includes that property, in which event the declaration must indicate that no appropriate tax map exists. The exceptions to the foregoing are the following:

**Sec. 10. 36 MRSA §4641-D, 3rd ¶,** as amended by P&SL 1975, c. 78, §21, is further amended to read:

The declaration shall must be in a form prescribed by the State Tax Assessor, who shall provide an adequate supply of such forms to each register of deeds in the State. The State Tax Assessor shall prescribe a form for the declaration of value with regard to transfers of controlling interests subject to tax under this chapter.

**Sec. 11. 36 MRSA §4641-E, 2nd ¶,** as amended by PL 1993, c. 398, §6, is further amended to read:

Within 3 years of the recording of a deed subject to the tax imposed by this chapter or a transfer of a controlling interest in an entity subject to taxation under this chapter, the State Tax Assessor may examine any books, papers, records or memoranda of the grantor or grantee bearing upon the amount of tax payable, and may enforce that right of examination by subpoena. If the assessor determines that there is a deficiency of taxes due under this chapter, such deficiency must be assessed, together with interest and penalties, with notice to the persons liable, but no such assessment may be made more than 3 years after the date of recording or transfer.



2 Allocates funds to authorize the payment of  
3 additional Real Estate Transfer Tax revenue  
4 to the Maine State Housing Authority for the  
5 Housing Opportunities for Maine Fund.'

6  
7 Further amend the bill by inserting at the end before the  
8 summary the following:

10  
11  
12 **FISCAL NOTE**

13 This bill will have an insignificant net effect on revenue  
14 generated by the Real Estate Transfer Tax.

15 The Bureau of Revenue Services will incur some minor  
16 additional costs to develop and distribute a new form for  
17 reporting transfers of controlling interests. These costs can be  
18 absorbed within the bureau's existing budgeted resources.

19 This bill may increase prosecutions for Class E crimes. If  
20 a jail sentence is imposed, the additional costs to the counties  
21 are estimated to be \$83.36 per day per prisoner. The number of  
22 prosecutions that may result in a jail sentence and the resulting  
23 costs to the county jail system are expected to be insignificant.

24 The additional workload and administrative costs associated  
25 with the minimal number of new cases filed in the court system  
26 can be absorbed within the budgeted resources of the Judicial  
27 Department. The collection of additional fines may increase  
28 General Fund revenue by minor amounts.'

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34 **SUMMARY**

35 This amendment contains the recommendations of the Joint  
36 Standing Committee on Taxation regarding its interim study of the  
37 application of the Real Estate Transfer Tax to transfers of  
38 controlling interests in entities with an interest in real  
39 property. The amendment extends the Real Estate Transfer Tax to  
40 cover the transfer of controlling interests in entities with an  
41 interest in real property. The amendment is intended to treat  
42 transfers of real estate by means of transfers of controlling  
43 interests in the same manner as transfers by deed. The tax is  
44 collected and revenues distributed in the same manner as the tax  
45 on deeds.

46  
47 The amendment reduces the tax rate on the transfer tax to  
48 eliminate any net increase in revenue from the application of the



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2 transfer tax to controlling interests. The amendment excludes  
from the transfer tax on transfers of controlling interests  
4 property that is acquired by a financial institution by  
foreclosure on a mortgage or other loan and that is held for  
resale.

6

8 The amendment includes an allocation section and a fiscal  
note.

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