

MAINE STATE LEGISLATURE

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L.D. 2400

DATE: 3-9-00

(Filing No. H-867)

MAJORITY TAXATION

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1694, L.D. 2400, Bill, "An Act to Create Employment Opportunities by Clarifying Maine's Tax Laws Regarding Mutual Fund Companies"

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 §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.

2 B. "Distribution services" includes, but is not limited to,
4 the services of advertising, servicing, marketing or selling
6 shares of a regulated investment company. The services of
8 advertising, servicing or marketing shares qualify as
10 distribution services only when the service is performed by
12 a person who is or, in the case of a closed-end company, was
14 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
service of selling shares must be performed pursuant to a
contract entered into pursuant to 15 United States Code,
Section 80a-15(b), as amended.

16 C. "Domicile" of a shareholder of a regulated investment
18 company is presumed to be the shareholder's mailing address
20 on the records of the regulated investment company or the
22 mutual fund service provider. If the regulated investment
24 company or the mutual fund service provider has actual
26 knowledge that the shareholder's primary residence or
28 principal place of business is different than the
30 shareholder's mailing address, the presumption does not
32 control. If the shareholder of record is a person that
34 holds the shares of a regulated investment company as
36 depositor for the benefit of a separate account, then the
shareholder of record is the contract owner or policyholder
of the contracts or policies supported by the separate
account, and it is presumed that the domicile of that
shareholder of record is the contract owner's or
policyholder's mailing address to the extent that the
regulated investment company maintains such mailing
addresses in the regular course of business. If the
shareholder's principal place of business is different than
the shareholder's mailing address, the presumption does not
control.

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

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2 that has entered into such contract with a regulated investment company.

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

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

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

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

26 B. For purposes of this subsection, Maine receipts from the direct or indirect provision of management, distribution or administration services to or on behalf of a regulated investment company or from trustees, sponsors and participants of employee benefit plans that have accounts in a regulated investment company are determined by multiplying total receipts for the taxable year from each separate regulated investment company for which the mutual fund service provider performs management, distribution or administration services by a fraction. The numerator of the fraction is the average of the number of shares owned by the 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.

48 C. Receipts other than from the provision of services described in paragraph B are Maine receipts if they would

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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.

Sec. 2. Application. This Act applies to tax years beginning on or after January 1, 2001.'

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

FISCAL NOTE

2000-01

REVENUES

General Fund	(\$14,642)
Other Funds	(787)

The change to the apportionment formula and combined reporting requirements for mutual fund service providers will decrease income tax collections by \$15,429 in fiscal year 2000-01, \$38,880 in fiscal year 2001-02 and \$39,658 in fiscal year 2002-03. The reduction of these tax collections will decrease the amounts transferred to the Local Government Fund for state-municipal revenue sharing in those years by \$787, \$1,983 and \$2,023, respectively. The resulting net reductions of General Fund revenue will be \$14,642 in fiscal year 2000-01, \$36,897 in fiscal year 2001-02 and \$37,635 in fiscal year 2002-03.

The Bureau of Revenue Services will incur some minor additional costs to implement this tax change. These costs can be absorbed within the bureau's existing budgeted resources.'

SUMMARY

This amendment replaces the original concept draft. The amendment provides an alternative method for apportionment of the receipts of mutual fund service providers for purposes of the Maine income tax. Under the provisions of the amendment, a mutual fund service provider may opt to apportion its income

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2 according to the percentage of shares of a regulated investment
3 company owned by shareholders domiciled in Maine. The amendment
4 also provides that a taxpayer choosing this method of
5 apportionment is not required to file a combined report and may
6 not be included in the combined report of another taxpayer. The
option to use this method of apportionment is irrevocable for 5
years. The amendment also adds a fiscal note.

COMMITTEE AMENDMENT