

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2000

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Legislative Document

No. 2643

S.P. 1053

In Senate, March 22, 2000

**An Act Ensuring that Certain Land Transfers Accomplished through  
Stock Transfers are not Exempt from the Transfer Tax.**

(NEW DRAFT OF S.P.661 L.D.1883)  
(NEW TITLE)

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Reported by Senator RUHLIN for the Committee on Taxation and printed pursuant to Joint Rule 310.4.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Original bill "An Act to Ensure that Certain Land Transfers Accomplished through Stock Transfers are not Exempt from the Transfer Tax" (S.P.661)(L.D.1883)  
Presented by Senator MICHAUD of Penobscot.  
Cosponsored by Senators: NUTTING of Androscoggin, TREAT of Kennebec,  
Representatives: SHIAH of Bowdoinham, STANLEY of Medway.

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

2           **Sec. 1. 36 MRSA §4641, sub-§§1-A and 2-A** are enacted to read:

4           **1-A. Controlling interest.** "Controlling interest" means:

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

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

24           **2-A. Real property.** "Real property" means land or anything  
26           affixed to land. "Real property" includes, but is not limited  
28           to, improvements such as buildings, mobile homes other than  
30           stock-in-trade, lines of electric light and power companies,  
32           pipelines and other things constructed or situated on land when  
34           the owner of the improvements is not the landowner.

36           **Sec. 2. 36 MRSA §4641, sub-§3,** as amended by PL 1999, c. 478,  
38           §3, is further amended to read:

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

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

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

4           **§4641-A. Rate of tax; liability for tax**

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

8  
10           A. The rate of tax is \$2.20 for each \$500 or fractional  
part of \$500 of the value of the real property transferred.

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

14  
16           **2. Transfer of controlling interest in entity with interest  
in real property.** A tax is imposed on the transfer or  
18           acquisition within any 12-month period of a controlling interest  
in any entity with a fee interest in real property in this State.

20           A. The rate of the tax is \$2.20 for each \$500 or fractional  
part of \$500 of the value of the real property owned by the  
22           entity and located in this State.

24           B. The tax is imposed 1/2 on the transferor and 1/2 on the  
transferee, but if the transfer or acquisition is not  
26           reported to the register of deeds in the county or counties  
in which the property is located, and the tax is not paid  
28           within 30 days of the completion of the transfer or  
acquisition, the transferor and the transferee are jointly  
30           and severally liable for the full amount.

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

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

40           **§4641-B. Collection**

42  
44           **1. Transfer of real property by deed.** The State Tax  
Assessor shall provide for the collection of the tax on the  
46           transfer of real property by deed by each register of deeds, and  
for that purpose may provide for the installation of a meter  
48           machine in each registry office. When any deed is offered for  
recordation, the register of deeds shall ascertain and compute  
the amount of tax due on the transfer and shall collect that

2 amount. The amount of tax must be computed on the value of the  
3 property as set forth in the declaration of value prescribed by  
4 section 4641-D. Payment of tax must be evidenced by affixing  
5 such indicia of payment as prescribed by the State Tax Assessor  
6 to the declaration of value provided for in section 4641-D.

7  
8 2. Transfer or acquisition of controlling interest in  
9 entity with fee interest in real property. A person transferring  
10 or acquiring a controlling interest in an entity with a fee  
11 interest in real property for which no deed is given shall report  
12 the transfer or acquisition to the register of deeds in the  
13 county or counties in which the real property is located within  
14 30 days of the transfer or acquisition on a return in the form of  
15 an affidavit furnished by the State Tax Assessor. The return  
16 must be signed by both the transferor and the transferee and must  
17 be accompanied by payment of the tax due. When the real property  
18 is located in more than one county, the tax must be divided  
19 proportionally among the counties in the same proportion in which  
20 the real property value is distributed among the counties.  
21 Dispute between 2 or more counties as to the proper amount of tax  
22 due to them as a result of a particular transaction must be  
23 decided by the State Tax Assessor upon the written petition of an  
24 official authorized to act on behalf of any such county.

25  
26 3. Disposition of funds. Each register of deeds shall, on  
27 or before the 10th day of each month, pay over to the State Tax  
28 Assessor 90% of the tax collected pursuant to this section during  
29 the previous month. The remaining 10% must be retained for the  
30 county by the register of deeds and accounted for to the county  
31 treasurer as reimbursement for services rendered by the county in  
32 collecting the tax. If the tax collected is not paid over by the  
33 10th day of the month, the State Tax Assessor may impose interest  
34 pursuant to section 186.

35  
36 4. Distribution of State's share of proceeds. The State  
37 Tax Assessor shall pay all net receipts to the Treasurer of  
38 State, who shall credit 1/2 of the revenue to the General Fund  
39 and who shall monthly pay the remaining 1/2 to the Maine State  
40 Housing Authority, which shall deposit the funds in the Housing  
41 Opportunities for Maine Fund created in Title 30-A, section 4853.

42 5. Dispute regarding amount. In the event of a dispute as  
43 to the correct amount of tax, the individual seeking to record  
44 the deed or a party to the transfer of a controlling interest may  
45 request the State Tax Assessor to determine the correct amount of  
46 tax to be paid.

47 Sec. 5. 36 MRSA §4641-C, first ¶, as amended by PL 1993, c.  
48 398, §4, is further amended to read:  
49  
50

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

4 **Sec. 6. 36 MRSA §4641-C, sub-§17**, as repealed and replaced by  
PL 1995, c. 462, Pt. A, §70, is amended to read:

6  
8 **17. Deeds to charitable conservation organizations.** Deeds  
for gifts of land or interests in land granted to bona fide  
10 nonprofit institutions, organizations or charitable trusts under  
state law or charter, a similar law or charter of any other state  
12 or the Federal Government that meet the conservation purposes  
requirements of Title 33, section 476, subsection 2, paragraph B  
without actual consideration for the deeds; and

14  
16 **Sec. 7. 36 MRSA §4641-C, sub-§18**, as enacted by PL 1995, c.  
462, Pt. A, §71, is amended to read:

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

24  
26 **Sec. 8. 36 MRSA §4641-C, sub-§§19 and 20** are enacted to read:

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

36 **20. Controlling interests.** Transfers of controlling  
interests in an entity with a fee interest in real property if  
38 the transfer of the real property would qualify for exemption if  
accomplished by deed of the real property between the parties to  
40 the transfer of the controlling interest.

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

44  
46 Any--deed,--except Except as otherwise provided in this  
section, must any deed, when offered for recording, and any  
48 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

2 to the transaction or their authorized representatives, declaring  
the value of the property transferred and indicating the taxpayer  
4 identification numbers of the grantor and grantee. The statement  
or declaration with regard to a transfer by deed must include  
6 evidence of compliance with section 5250-A and reference to the  
appropriate tax map and parcel number unless no tax map exists  
8 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:

10 **Sec. 10. 36 MRSA §4641-D, 3rd ¶**, as amended by P&SL 1975, c.  
12 78, §21, is further amended to read:

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

20 **Sec. 11. 36 MRSA §4641-E, 2nd ¶**, as amended by PL 1993, c.  
22 398, §6, is further amended to read:

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

36 **Sec. 12. 36 MRSA §4641-J**, as repealed and replaced by PL  
1977, c. 696, §293, is amended to read:

38 **§4641-J. Recording without tax**

40 Any register of deeds who, upon recording any deed or  
42 receiving a report of a transfer of a controlling interest upon  
which a tax is imposed by this chapter, fails to collect that tax  
44 or to obtain the declaration of value required by this chapter  
and does so with the intent of defeating the purposes of this  
46 chapter commits a civil violation for which a forfeiture not to  
exceed \$200 may be adjudged.

48 **Sec. 13. 36 MRSA §4641-K**, as amended by PL 1993, c. 398, §7,  
50 is further amended to read:

2 **§4641-K. Falsifying declaration of value**

4 Any person who knowingly falsifies the declaration of value  
6 prescribed by section 4641-D or refuses to permit the State Tax  
8 Assessor, or any of the State Tax Assessor's agents or  
10 representatives to inspect property in question or any relevant  
12 books, papers, records or memoranda within 3 years after  
recording or transfer of a controlling interest subject to tax  
under this chapter, or knowingly alters, cancels or obliterates  
any part thereof, or knowingly makes any false entry therein is  
guilty of a Class E crime.

14 **Sec. 14. 36 MRSA §4641-L**, as enacted by PL 1975, c. 572, §1,  
is amended to read:

16 **§4641-L. No effect on recordation**

18 Failure to comply with the requirements of this chapter  
20 shall may in no way affect the validity of any recorded  
instrument or the validity of any recordation or transfer of a  
22 controlling interest.

24 **Sec. 15. Application.** This Act does not apply to transfers  
pursuant to contracts executed before March 1, 2000.

26 **Sec. 16. Allocation.** The following funds are allocated from  
Other Special Revenue funds to carry out the purposes of this Act.

30 **2000-01**

32 **MAINE STATE HOUSING AUTHORITY**

34 **Housing Authority - State**

36 All Other \$618,750

38 Allocates funds to authorize the payment of  
40 additional Real Estate Transfer Tax revenue  
to the Maine State Housing Authority for the  
42 Housing Opportunities for Maine Fund.

44 **FISCAL NOTE**

46 **2000-01**

48 **APPROPRIATIONS/ALLOCATIONS**



Other Funds \$618,750

2

**4 REVENUES**

6 General Fund \$618,750  
Other Funds 618,750

8

10 This bill will increase the amount of revenue generated by  
12 the Real Estate Transfer Tax. General Fund revenue will increase  
14 by \$618,750 in fiscal year 2000-01 and approximately \$675,000  
16 annually beginning in fiscal year 2001-02. The Housing  
18 Opportunities for Maine (H.O.M.E.) Fund will also realize equal  
amounts of revenue beginning in fiscal year 2000-01. An  
additional allocation of \$618,750 in fiscal year 2000-01 is  
included to authorize the payment of these additional revenues to  
the Maine State Housing Authority.

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

24

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

30

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

36

38

**SUMMARY**

**40**

42 This bill contains the recommendations of the Joint Standing  
Committee on Taxation regarding its interim study of the  
44 application of the Real Estate Transfer Tax to transfers of  
controlling interests in entities with an interest in real  
46 property. The bill extends the Real Estate Transfer Tax to cover  
the transfer of controlling interests in entities with an  
interest in real property. The bill is intended to treat  
48 transfers of real estate by means of transfers of controlling

2 interests in the same manner as transfers by deed. The tax is  
collected and revenues distributed in the same manner as the tax  
on deeds. The bill includes an allocation section and a fiscal  
4 note to the bill.