

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
120TH LEGISLATURE
FIRST REGULAR SESSION

SENATE AMENDMENT "5" to COMMITTEE AMENDMENT "A" to H.P. 256, L.D. 300, Bill, "An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2002 and June 30, 2003"

Amend the amendment by striking out all of Part M and inserting in its place the following:

PART M

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

1-A. Controlling interest. In the case of a corporation, "controlling interest" means either 50% or more of the total combined voting power of all classes of stock of the corporation entitled to vote or 50% or more of the capital, profits or beneficial interest in the voting stock of the corporation. In the case of a partnership, association, trust or other entity, "controlling interest" means 50% or more of the capital, profits or beneficial interest in the partnership, association, trust or other entity.

For purpose of the tax imposed by section 4641-A, subsection 1, all acquisitions of persons acting in concert must be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The bureau shall adopt standards by rule to determine when persons are acting in concert. In adopting a rule for this purpose, the bureau shall consider the following:

A. Persons must be treated as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; and

SENATE AMENDMENT

2 B. When persons are not commonly owned or controlled, they
4 must be treated as acting in concert only when the unity
6 with which the purchasers have negotiated and will
8 consummate the transfer of ownership interest supports a
10 finding that they are acting as a single entity. If the
 acquisitions are completely independent, with each purchaser
 buying without regard to the identity of the other
 purchasers, then the acquisitions must be considered
 separate acquisitions.

12 2-A. Real property. "Real property" means land or anything
14 affixed to land. "Real property" includes, but is not limited
16 to, improvements such as buildings, mobile homes other than
18 stock-in-trade, lines of electric light and power companies and
 pipelines and other things constructed or situated on land when
 the owner of the improvements is not the landowner.

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

22 3. Value. "Value" means the amount of the actual
24 consideration therefor for real property, except that in the case
26 of a gift, or a contract or deed with nominal consideration or
28 without stated consideration, or in the case of the transfer of a
30 controlling interest in an entity with a fee interest in real
32 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.

34 "Value" does not include the amount of consideration attributable
36 to vacation exchange rights, vacation services or club
38 memberships or the costs associated with those rights, services
40 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.

42 Sec. M-3. 36 MRSA §4641-A, as repealed and replaced by PL
44 1993, c. 398, §2, is repealed and the following enacted in its
46 place:

48 §4641-A. Rate of tax; liability for tax

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

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

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

6
7 2. Transfer of direct or indirect controlling interest in
8 entity with interest in real property. A tax is imposed on the
9 transfer or acquisition within any 12-month period of a direct or
10 indirect controlling interest in any entity with a fee interest
11 in real property in this State.

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

15 §4641-B. Collection

16
17 1. Transfer of real property by deed. The State Tax
18 Assessor shall provide for the collection of the tax on the
19 transfer of real property by deed by each register of deeds and
20 for that purpose may provide for the installation of a meter
21 machine in each registry office. When any deed is offered for
22 recordation, the register of deeds shall ascertain and compute
23 the amount of tax due on the deed and shall collect that amount.
24 The amount of tax must be computed on the value of the property
25 as set forth in the declaration of value prescribed by section
26 4641-D. Payment of tax must be evidenced by affixing such
27 indicia of payment as prescribed by the State Tax Assessor to the
28 declaration of value provided for in section 4641-D.
29

30
31 2. Transfer or acquisition of controlling interest in
32 entity with fee interest in real property. A person transferring
33 or acquiring a controlling interest in an entity with a fee
34 interest in real property for which a deed is not given shall
35 report the transfer or acquisition to the register of deeds in
36 the county or counties in which the real property is located
37 within 30 days of the transfer or acquisition on a return in the
38 form of an affidavit furnished by the State Tax Assessor. The
39 return must be signed by both the transferor and the transferee
40 and accompanied by payment of the tax due. When the real
41 property is located in more than one county, the tax must be
42 divided among the counties in the same proportion in which the
43 real property is distributed among the counties. Disputes
44 between 2 or more counties as to the proper amount of tax due to
45 them as a result of a particular transaction must be decided by
46 the State Tax Assessor upon the written petition of an official
47 authorized to act on behalf of any such county.
48

2 3. Disposition of funds. Each register of deeds shall, on
3 or before the 10th day of each month, pay over to the State Tax
4 Assessor 90% of the tax collected pursuant to this section during
5 the previous month. The remaining 10% must be retained for the
6 county by the register of deeds and accounted for to the county
7 treasurer as reimbursement for services rendered by the county in
8 collecting the tax. If the tax collected is not paid over by the
9 10th day of the month, the State Tax Assessor may impose interest
10 pursuant to section 186.

11
12 4. Distribution of State's share of proceeds. The State
13 Tax Assessor shall pay all net receipts to the Treasurer of State
14 and at the same time provide the Treasurer of State with
15 documentation showing the amount of revenues derived from the tax
16 imposed by section 4641-A, subsection 1 and the amount of
17 revenues derived from the tax imposed by section 4641-A,
18 subsection 2. The Treasurer of State shall credit 1/2 of the
19 revenues derived from the tax imposed by section 4641-A to the
20 General Fund and shall monthly pay the remaining 1/2 of such
21 revenues to the Maine State Housing Authority, which shall
22 deposit the funds in the Housing Opportunities for Maine Fund
23 created in Title 30-A, section 4853.

24 5. Distribution of funds relating to controlling interest
25 transactions; temporary provisions. Notwithstanding subsection
26 4, the Treasurer of State shall credit to the General Fund all of
27 the revenues derived from the tax imposed by section 4641-A,
28 subsection 2 with respect to transactions occurring from July 1,
29 2001 through July 30, 2003.

30
31 6. Dispute regarding amount. In the event of a dispute as
32 to the correct amount of tax, the individual seeking to record
33 the deed may request that the State Tax Assessor determine the
34 correct amount of tax to be paid in order for the deed to be
35 recorded.

36
37 Sec. M-5. 36 MRSA §4641-C, first ¶, as amended by PL 1993, c.
38 398, §4, is further amended to read:

39
40 The following deeds are exempt from the tax imposed by this
41 chapter:

42 Sec. M-6. 36 MRSA §4641-C, sub-§18, as amended by PL 1999, c.
43 638, §46, is further amended to read:

44
45 18. Limited liability company deeds. Deeds to a limited
46 liability company from a corporation, a general or limited
47 partnership or another limited liability company, when the
48 grantor or grantee owns an interest in the limited liability

company in the same proportion as the grantor's or grantee's
interest in or ownership of the real estate being conveyed; and

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

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

Sec. M-8. 36 MRSA §4641-C, sub§-20 is enacted to read:

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

Sec. M-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. M-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.

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

4
6 Within 3 years of the recording of a deed subject to the tax
imposed by this chapter or a transfer of a controlling interest
7 in an entity subject to taxation under this chapter, the State
8 Tax Assessor may examine any books, papers, records or memoranda
9 of the grantor or grantee bearing upon the amount of tax payable,
10 and may enforce that right of examination by subpoena. If the
11 assessor determines that there is a deficiency of taxes due under
12 this chapter, such deficiency must be assessed, together with
13 interest and penalties, with notice to the persons liable, but no
14 such assessment may be made more than 3 years after the date of
recording or transfer.

16
18 **Sec. M-12. 36 MRSA §4641-J**, as repealed and replaced by PL
1977, c. 696, §293, is amended to read:

20 **§4641-J. Recording without tax**

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

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

32 **§4641-K. Falsifying declaration of value**

34
36 Any person who knowingly falsifies the declaration of value
prescribed by section 4641-D or refuses to permit the State Tax
37 Assessor, or any of the State Tax Assessor's agents or
representatives to inspect property in question or any relevant
38 books, papers, records or memoranda within 3 years after
39 recording or transfer of a controlling interest subject to tax
40 under this chapter, or knowingly alters, cancels or obliterates
41 any part thereof, or knowingly makes any false entry therein is
guilty of a Class E crime.

44
46 **Sec. M-14. 36 MRSA §4641-L**, as enacted by PL 1975, c. 572,
§1, is amended to read:

48 **§4641-L. No effect on recordation**

2 Failure to comply with the requirements of this chapter
shall--in--no--way does not affect the validity of any recorded
4 instrument or the validity of any recordation or transfer of a
controlling interest.

6 **Sec. M-15. 36 MRSA §5122, sub-§1, ¶H,** as amended by PL 1997,
c. 746, §1 and affected by §24, is further amended to read:

8
10 H. The absolute value of the amount of any net operating
loss arising from tax years beginning on or after January 1,
12 1989, but before January 1, 1993, that arises from an S
Corporation with total assets for the year of at least
14 \$1,000,000 and the absolute value of the amount of any net
operating loss arising from tax years beginning on or after
January 1, 2002 that, pursuant to the United States Internal
16 Revenue Code, Section 172, is are being carried back for
18 federal income tax purposes to the taxable year by the
taxpayer;

20 **Sec. M-16. 36 MRSA §5122, sub-§2, ¶H,** as amended by PL 1997,
c. 732, §5 and c. 746, §4 and affected by §24, is further amended
22 to read:

24 H. For each taxable year subsequent to the year of the
loss, an amount equal to the absolute value of the net
26 operating loss arising from tax years beginning on or after
January 1, 1989, but before January 1, 1993, and the
28 absolute value of the amount of any net operating loss
arising from tax years beginning on or after January 1,
30 2002, for which federal adjusted gross income was increased
in accordance with subsection 1, paragraph H and that
32 pursuant to the Code, Section 172 was carried back for
federal income tax purposes, but only to the extent that:

- 34 (1) Maine taxable income is not reduced below zero;
- 36 (2) The taxable year is within the allowable federal
38 period for carry-over; and
- 40 (3) The amount has not been previously used as a
42 modification pursuant to this subsection;

44 **Sec. M-17. 36 MRSA §5200-A, sub-§1, ¶H,** as amended by PL 1997,
c. 557, Pt. B, §7 and affected by Pt. G, §1, is further amended
to read:

46
48 H. The absolute value of the amount of any net operating
loss arising from tax years beginning on or after January 1,
1989 but before January 1, 1993 and the absolute value of
50 the amount of any net operating loss arising from tax years

2 beginning on or after January 1, 2002 that, pursuant to the
United States Internal Revenue Code, Section 172, is are
4 being carried back for federal income tax purposes to the
taxable year by the taxpayer;

6 **Sec. M-18. 36 MRSA §5200-A, sub-§2, ¶H,** as amended by PL 1999,
c. 521, Pt. B, §3 and affected by §11, is further amended to read:
8

H. For each taxable year subsequent to the year of the
10 loss, an amount equal to the absolute value of the net
operating loss arising from tax years beginning on or after
12 January 1, 1989 but before January 1, 1993, and the absolute
value of the amount of any net operating loss arising from
14 tax years beginning on or after January 1, 2002 that,
pursuant to the Code, Section 172, was carried back for
16 federal income tax purposes, but only to the extent that:

- 18 (1) Maine taxable income is not reduced below zero;
- 20 (2) The taxable year is within the allowable federal
22 period for carry-over; and
- 24 (3) The amount has not been previously used as a
modification pursuant to this subsection;

26 **Sec. M-19. Tax revenue compliance.** The Department of
Administrative and Financial Services, Bureau of Revenue Services
28 is authorized to implement tax revenue compliance initiatives
under current tax law.
30

Sec. M-20. Application. That section of this Part that enacts
32 the Maine Revised Statutes, Title 36, section 4641-A, subsection
2 and other sections of this Part affecting Title 36, chapter
34 711-A to the extent that they deal with the tax imposed on the
transfer or acquisition of a controlling interest in any entity
36 with a fee interest in real property in this State apply to
transactions occurring on or after July 1, 2001, except that
38 transactions made pursuant to contracts executed before March 1,
2001 are not subject to such tax.'

40 Further amend the amendment by inserting after Part Y the
42 following:

44 **'PART Z**

46 **Sec. Z-1. Closing of liquor stores.** The Department of
Administrative and Financial Services, Bureau of Alcoholic
48 Beverages and Lottery Operations shall close 3 of the state

SENATE AMENDMENT "E" to COMMITTEE AMENDMENT "A" to H.P. 256,
L.D. 300

2 liquor stores, the one located in Calais, the one located in
Kittery and the 3rd one to be determined by the department.'

4 Further amend the amendment by relettering or renumbering
any nonconsecutive Part letter or section number to read
6 consecutively.

8

FISCAL NOTE

10

This amendment will decrease the General Fund cost of the
12 bill by \$956,687 in fiscal year 2001-02 and will increase the
General Fund cost of the bill by \$720,661 in fiscal year
14 2002-03. Based on the estimated year-ending balances, this
amendment maintains a balanced General Fund budget.

16

18

SUMMARY

20

This amendment strikes Part M of the amendment and replaces
it with a new Part M that amends the law as it relates to the
22 Real Estate Transfer Tax in order to apply the tax to transfers
of controlling interests in entities with an interest in real
24 property in the same manner as transfers by deed and amends the
law to enact positive income modifications for individuals and
26 corporations, requiring the add-back of any net operating loss
deduction carried back for federal income tax purposes. A
28 corresponding negative income modification for individuals and
corporations would allow the deduction of any net operating loss
30 carry-back deduction disallowed. The amendment adds a new Part Z
that directs the Department of Administrative and Financial
32 Services, Bureau of Alcoholic Beverages and Lottery Operations to
close 3 of the state liquor stores.

34

36

SPONSORED BY:

(Senator DOUGLASS)

38

40

COUNTY: Androscoggin

42