

MAINE STATE LEGISLATURE

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H.P. 677

House of Representatives, February 20, 2003

An Act To Establish a Penalty on Gains from the Sale or Exchange of Land from Which Timber Has Been Harvested

Reference to the Committee on Taxation suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative KOFFMAN of Bar Harbor.
Cosponsored by President DAGGETT of Kennebec and
Representatives: BULL of Freeport, GERZOFKY of Brunswick, SAVIELLO of Wilton,
SIMPSON of Auburn, SUSLOVIC of Portland, THOMPSON of China, Senators: DAMON of
Hancock, EDMONDS of Cumberland.

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

4 Sec. 1. 36 MRSA c. 105, sub-c. 2-C is enacted to read:

6 SUBCHAPTER 2-C

8 PENALTY ON GAINS FROM THE SALE OR EXCHANGE
10 OF LAND FOR TIMBER HARVESTING

12 §595. Definitions

14 As used in this subchapter, unless the context otherwise
16 indicates, the following terms have the following meanings.

18 1. Land for timber harvesting. "Land for timber
20 harvesting" means all land, whether or not improved, greater than
22 100 acres. "Land for timber harvesting" also means timber or
24 rights to timber on land greater than 100 acres when that timber
26 or those timber rights are sold within 10 years of purchase,
28 provided the underlying land is also sold within 10 years.

30 2. Sale or exchange. "Sale or exchange" means any transfer
32 of title to land for a consideration.

34 3. Title. "Title" means interest in property that endures
36 for an unlimited period of time, including, but not limited to,
38 an estate in fee simple, a life estate, a perpetual leasehold and
40 a perpetual easement, except as modified or enlarged by explicit
42 provisions of this subchapter and as limited in this subchapter
44 to land for timber harvesting. The transfer of an option for the
46 sale or exchange of land for timber harvesting is considered a
48 transfer of title to land for timber harvesting for the purposes
of this subchapter.

4. Transfer. "Transfer" means a grant, assignment,
conveyance, will, trust, decree of court or any other means of
transferring title to property or vesting title to property in
any person.

5. Underlying land. "Underlying land" means the land for
timber harvesting from which timber or timber rights have been
separated.

§596. Penalty imposed

1. Penalty imposed. There is imposed, in addition to all
other taxes imposed by this Title, a penalty on gains from the
sale or exchange of land for timber harvesting.

2 The penalty imposed by this section is based upon the years the
3 land was held by the transferor at the following rates on the
4 gain, as gain is determined under section 599.

6 <u>YEARS LAND HELD BY</u> <u>TRANSFEROR</u>	8 <u>GAINS, AS A PERCENTAGE</u> <u>OF BASIS</u>		
	0-99%	100-199%	200% or more
10 <u>Less than one year</u>	60%	70%	80%
12 <u>At least one year, but less than 3</u>	47.5%	55%	65%
14 <u>At least 3 years, but less than 5</u>	35%	40%	50%
16 <u>At least 5 years, but less than 7</u>	22.5%	25%	35%
18 <u>At least 7 years, but less than 10</u>	10%	15%	20%

20 2. Exemption. When an exemption from the penalty imposed
21 under subsection 1 is provided in the case of a purchase of land
22 for the use of a dwelling used by the taxpayer as that taxpayer's
23 principal residence, the land need not have been purchased at the
24 same time as the dwelling to qualify for that exemption.

25 §597. Sale; exchange of land

26 A contract for the sale of land constitutes a sale or
27 exchange of land for all purposes of this subchapter. A contract
28 does not constitute a sale or exchange until some consideration
29 has passed to or for the benefit of the seller or exchanger. The
30 sale or exchange is considered to take place at the time any
31 consideration first passes under the contract. A mere promise to
32 purchase and amounts paid as earnest money or amounts paid in
33 deposit or amounts paid in escrow to which the seller has no
34 immediate right do not constitute the passing of consideration
35 for the purposes of this subchapter.

36 Any sale or exchange of shares in a corporation or other
37 entity or of comparable rights or property interests in any other
38 form of organization or legal entity that effectively entitles
39 the purchaser to the use or occupancy of land constitutes a sale
40 or exchange of land.

41 §598. Dwelling on land for timber harvesting

42 If, at the time of transfer, there is not on the land for
43 timber harvesting a dwelling completed and fit for occupancy as
44 the purchaser's principal residence, the residence must be
45 completed and occupied within 2 years of the date of transfer or
46 the penalty imposed by this subchapter becomes due and payable.

47 §599. Basis; gain; holding period

2 1. Basis of land sold or exchanged. The provisions of the
Code determine the basis of land sold or exchanged.

4
6 2. Consideration. The amount realized from the sale or
exchange is the full actual consideration paid or to be paid,
including the amount of any liens or encumbrances on the land not
8 removed by the sale or exchange. The amount realized from the
sale or exchange is the gross amount reduced by any expenses of
10 sale and commissions. If a sale includes land and buildings or
other structures, the amount realized must be allocated between
12 the land and the buildings or other structures on the basis of
fair market value.

14
16 3. Gain subject to penalty. The gain subject to penalty
from the sale or exchange of land for timber harvesting is the
amount realized from the sale or exchange of land, including the
18 amount realized from the sale of timber or timber rights, minus
the basis of the land as determined under subsection 1.

20
22 The penalty on the gain under this subchapter from the sale or
exchange of land for timber harvesting may not be reduced by any
losses incurred in other transactions.

24
26 4. Holding period. The land for timber harvesting sold or
exchanged is deemed to have been held as determined under the
Code. If a person's holding period is claimed by the seller or
28 exchanger, the holding period may not exceed the time that that
person had actual and recorded title to the land in that person's
30 name and includes the time the land was held prior to the
effective date of this subchapter. If a husband and wife are
32 tenants by the entirety there may be added to the holding period
the amount of time the land was held by one spouse alone before
34 that spouse created the tenancy by the entirety. Notwithstanding
any other provision to the contrary under the Code, if a tenancy
36 by the entirety is dissolved by reason of death or divorce, the
holding period during the tenancy by the entirety is added to the
38 holding period of the spouse subsequently owning the property in
the spouse's own name. For the purposes of this subsection, land
40 devised to or inherited by a surviving spouse or land awarded to
a spouse upon dissolution of marriage is treated as though it was
42 held by husband and wife as tenants by the entirety. If the land
is a gift, the holding period of the donee must include the time
44 that actual and recorded title was held by the donor.

46 Notwithstanding any other provisions of this subsection, land
acquired from a decedent or an estate or sold by an estate has a
48 holding period commencing as of the date of death of the decedent
and its basis is the fair market value of the property as of the

2 date of death of the decedent or alternative valuation date as
3 finally determined under the Code for the federal estate tax.

4 **§600. Liability for penalty**

6 **1. Person liable for penalty.** The person liable for the
7 penalty imposed on gain from the sale or exchange of land for
8 timber harvesting is the transferor, which includes the owner,
9 seller or other exchanger of the land for timber harvesting sold
10 or exchanged. Notwithstanding section 598, the person acquiring
11 the land for timber harvesting shall certify to the State Tax
12 Assessor that the building will begin within one year of the date
13 of purchase and will be completed within 2 years from the date of
14 purchase and the land will be sold within 3 years from the date
15 of purchase to a person who will use the building as a principal
16 residence. If the conditions set forth in this subsection are
17 not met, the penalty that is due from the seller must be paid by
18 the buyer.

20 **2. Underlying land.** Notwithstanding any other provision of
21 this section, when underlying land is sold separately from timber
22 or rights to timber purchased with the underlying land and both
23 sales occur within 10 years of the purchase, the gain on the sale
24 of the timber and timber rights must be combined with the gain or
25 loss on the sale of the underlying land to determine the penalty
26 imposed on gain from the sale or exchange of land for timber
27 harvesting. If the sale of the underlying land occurs before the
28 timber or timber rights are sold, the holding period used to
29 calculate the penalty is the holding period of the underlying
30 land. This subsection applies only when one or more transactions
31 within 10 years by the same transferor involve underlying land
32 that is or was part or all of a tract of more than 100 acres of
33 contiguous land owned by the same transferor at any time during
34 the holding period. Transferors owned or controlled directly or
35 indirectly by the same interests are deemed to be the same
36 transferor for purposes of this subsection.

38 **§600-A. Withholding; payment**

40 **1. Consideration withheld.** The buyer or transferee of any
41 land for timber harvesting held by the seller or transferor for
42 less than 10 years shall withhold 10% of all consideration paid
43 to the seller or transferor for the land, including 10% of all
44 partial payments made pursuant to installment sales under section
45 600-B. At the time any payment is made to the seller or
46 transferor, the amounts withheld must be remitted to the State
47 Tax Assessor.

48 **2. Return; file.** Within 30 days of the sale or exchange of
49 land for which withholding is required under this section, the
50 transferor shall file a return with the State Tax Assessor.

2 seller or transferor shall file a return with the State Tax
3 Assessor setting forth the amount of the penalty due pursuant to
4 section 596 and the amount withheld by the buyer or transferee
5 pursuant to subsection 1. The seller shall either remit with the
6 return the balance of the penalty due or make claim for a
7 refund. Any refund not made by the State Tax Assessor within 15
8 days of receipt of a valid claim accrues interest at the rate of
9 1/2 of 1% per month. For good cause shown and upon conditions
10 set by the State Tax Assessor, the State Tax Assessor may extend
11 the time for filing the return and paying the penalty required by
12 this subchapter.

13 **3. Prepayment; no penalty due.** Notwithstanding either
14 subsection 1 or 2, the seller or transferor may, in advance of
15 the sale or exchange, pay the penalty imposed by this subchapter
16 or obtain a written ruling from the State Tax Assessor that no
17 penalty is due under this subchapter. In either case, the State
18 Tax Assessor shall certify to the seller or transferor that the
19 payment has been made or that no penalty is due. Upon receipt by
20 the buyer or transferee of the certification from the seller or
21 transferor, the buyer or transferee is not required to withhold
22 under subsection 1.

23 **4. Personal debt.** The penalty required to be paid or
24 withheld under this subchapter constitutes a personal debt of the
25 person liable to pay or withhold the same to this State to be
26 recovered in an action under this subchapter.

27 **5. Suit.** An action may be brought to recover the amount of
28 the penalty to be paid or withheld in the manner prescribed for
29 recovering amounts owed for taxes under section 941. The amount
30 of the penalty to be paid or withheld is a lien in favor of this
31 State upon all property and rights of property, whether real or
32 personal, belonging to the person liable for the penalty or for
33 the withholding. The lien must be enforced in the manner
34 prescribed by subchapter 9, article 2.

35 **§600-B. Installment sale**

36 **1. Installment sale.** For the purposes of this section,
37 "installment sale" means sale or exchange of land for timber
38 harvesting for which the total penalty due under this subchapter
39 is greater than \$2,000 and in which the parties agree in advance
40 that payments must be received by the seller or transferor in
41 more than one installment on a date or dates other than the date
42 of closing. A sale financed by a mortgage, deed of trust or
43 other financing arrangement in which the seller or transferor is
44 paid in full on the date of the sale or exchange is not
45 considered an installment sale. A lease-purchase agreement under
46 which any part of the rental

2 payments constitute a portion of the purchase price of the land
3 is considered an installment sale, and for the purposes of this
4 subchapter the end of the holding period with respect to the sale
5 or exchange must be determined as of the date of the agreement.

6 2. Installment payment; due date. Notwithstanding any
7 provision of law to the contrary, the penalty under this
8 subchapter on any installment sale is due within 30 days of the
9 date of payment of each installment paid to the seller or
10 transferor. Except for the first installment, the seller or
11 transferor may elect to file a return as part of the seller's or
12 transferor's Maine income tax return for any year in which
13 subsequent installments are paid or due and to pay the balance of
14 the penalty as part of the seller's or transferor's Maine income
15 tax, except that, if the seller or transferor elects to file
16 annual returns, interest may not accrue on any withholding as
17 provided by section 600-A, subsection 1.

18 3. Penalty on installment payment. In an installment sale,
19 the total amount of the penalty due under this subchapter is the
20 amount that would have been due had the total purchase price been
21 paid on the date the sale or exchange took place. The amount of
22 the penalty due on each separate installment, including the first
23 installment, must bear the same proportion to the total amount of
24 the penalty due as the amount of that installment bears to the
25 total consideration.

26 §600-C. Administration of penalty

27 1. Administration; enforcement. The State Tax Assessor
28 shall administer and enforce this subchapter and this penalty.
29 The State Tax Assessor may issue, amend and withdraw from time to
30 time reasonable rules to assist in the administration and
31 enforcement. Rules adopted pursuant to this section are routine
32 technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

33 2. Administrative provisions. All the administrative
34 provisions of chapter 835, including those relating to the
35 collection and enforcement by the State Tax Assessor of the
36 withholding tax and the income tax apply to the penalty imposed
37 by this subchapter.

38 §600-D. Sanctions

39 1. Fine; imprisonment. A person who willfully attempts to
40 evade the penalty imposed by this subchapter may be imprisoned
41 for not more than one year or fined not more than \$10,000 or 5
42 times the amount of the penalty the person attempted to evade,
43 whichever is greater, or may be both imprisoned and fined. Any
44 officer, employee, director, trustee or other responsible person
45 _____

2 of a corporation or other taxable entity, and any other person
3 who counsels, aids, abets, participates in or conceals the
4 attempted evasion of the penalty, is subject to the sanctions of
5 this subsection.

6 2. Form. The State Tax Assessor shall create and provide
7 forms for the payment of the penalty under this subchapter. The
8 form for the payment of the penalty under this subchapter must
9 state in large type the sanctions provided by this section.

10 **Sec. 2. 36 MRSA §941, first ¶ is amended to read:**

11 The lien on real estate created by section 552 or 600-A may
12 be enforced in the following manner.

13

SUMMARY

14

15 The purpose of this bill is to create a penalty on gains
16 from the sale or exchange of land for timber harvesting. The
17 bill establishes a graduated penalty that declines over a 10-year
18 period and is related to the amount of gain as a percentage of
19 the cost basis. The penalty applies to parcels greater than 100
20 acres.
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24