

MAINE STATE LEGISLATURE

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TAXATION

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1075, L.D. 1470, Bill, "An Act To Make Minor Substantive Changes to the Tax Laws"

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 §1861-A, as amended by PL 2001, c. 583, §12, is further amended to read:

§1861-A. Reporting use tax on individual income tax returns

The assessor shall provide that individuals report use tax on items with a purchase price of \$5,000 or less on their Maine individual income tax returns. Taxpayers are required to attest to the amount of their use tax liability for the period of the tax return. Alternatively, they may elect to report an amount that is .04% of their Maine adjusted gross income. The table amount does not relate to items with a purchase price in excess of \$1,000. Liability arising from such items must be added to the table amount. Upon subsequent review, if use tax liability for the period of the return exceeds the amount of liability arising from the return, a credit of the amount of liability arising from the return is allowed subject to the limitation set out in this section. The credit is limited to the amount of liability arising from the return for items with a sale price of

COMMITTEE AMENDMENT

2 \$1,000 or less and may be applied only against a liability
determined on review with regard to items with a sale price of
4 \$1,000 or less. Use tax on any item with a purchase price of
more than \$5,000 must be reported in accordance with section
1951-A.

6
8 **Sec. 2. 36 MRSA §4641, sub-§1-A, ¶¶A and B**, as enacted by PL
2001, c. 559, Pt. I, §1 and affected by §15, are amended to read:

10 A. In the case of a corporation, "controlling interest"
12 means ~~either 50% or~~ more than 50% of the total combined
14 voting power of all classes of stock of the corporation
entitled to vote or ~~50% or~~ more than 50% of the capital,
profits or beneficial interest in the voting stock of the
corporation.

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

22 **Sec. 3. 36 MRSA §4641-D, 2nd ¶ from the end**, as amended by P&SL
24 1975, c. 78, §21, is further amended to read:

26 The register of deeds shall transmit both copies of the
declaration of value to the State Tax Assessor not later than 40
28 days from the date of recordation of the deed subject to the tax
or, in the case of a transfer of a controlling interest subject
to tax under this chapter, no later than the 10th day of the
30 month following the month in which the report of the transfer is
received by the register of deeds.

32
34 **Sec. 4. 36 MRSA §4641-E, 2nd ¶**, as amended by PL 2001, c. 559,
Pt. I, §11 and affected by §15, is further amended to read:

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

2 **Sec. 5. 36 MRSA §5122, sub-§2, ¶M**, as amended by PL 2001, c.
396, §34 and affected by §50, is further amended to read:

4 M. ~~An amount,--for~~ For each individual who is a primary
5 recipient of benefits under an employee retirement plan, an
6 amount that is the lesser of:

8 (1) Six thousand dollars reduced by the total amount
9 of the ~~primary-recipient's~~ individual's social security
10 benefits and railroad retirement benefits paid by the
11 United States, but not less than \$0. The reduction
12 does not apply to benefits paid under a military
13 retirement plan; or

14 (2) The aggregate of benefits ~~received by the primary~~
15 ~~recipient~~ under employee retirement plans and included
16 in the individual's federal adjusted gross income.

18 For purposes of this paragraph, the following terms have the
19 following meanings. "Primary recipient" means the
20 individual upon whose earnings the employee retirement plan
21 benefits are based or the surviving spouse of that
22 individual. "employee Employee retirement plan" means a
23 state, federal or military retirement plan or any other
24 retirement benefit plan established and maintained by an
25 employer for the benefit of its employees under the Code,
26 Section 401(a), Section 403 or Section 457(b) ~~of the Code,~~
27 except that distributions made pursuant to a section 457(b)
28 plan are not eligible for the deduction provided by this
29 paragraph if they are made prior to age 55 and are not part
30 of a series of substantially equal periodic payments made
31 for the life of the primary recipient or the joint lives of
32 the primary recipient and that recipient's designated
33 beneficiary. "Employee retirement plan" does not include an
34 individual retirement account under Section 408 of the Code,
35 a Roth IRA under Section 408A of the Code, a rollover
36 individual retirement account, a simplified employee pension
37 under Section 408(k) of the Code or an ineligible deferred
38 compensation plan under Section 457(f) of the Code.
39 Benefits under an employee retirement plan do not include
40 distributions that are subject to the tax imposed by the
41 Code, Section 72(t). For--purposes--of--this--paragraph,
42 "military "Military retirement plan" means benefits received
43 as a result of service in the active or reserve components
44 of the Army, Navy, Air Force, Marines or Coast Guard;

46 **Sec. 6. 36 MRSA §5142, sub-§1**, as amended by PL 1993, c. 478,
48 §1, is further amended to read:

COMMITTEE AMENDMENT "A" to H.P. 1075, L.D. 1470

1. **General.** The Maine adjusted gross income of a
2 nonresident individual derived from or connected with sources
3 within in this State is the sum of the following:

4
5 A. The net amount of items of income, gain, loss, and
6 deduction entering into the nonresident individual's federal
7 adjusted gross income that are derived from or connected
8 with sources in this State including (i) the nonresident's
9 individual's distributive share of partnership or limited
10 liability company income and deductions determined under
11 section 5192, (ii) the nonresident's individual's share of
12 estate or trust income and deductions determined under
13 section 5176, and (iii) the nonresident's--distributive
14 individual's pro rata share of the income of an electing
15 small-business S corporation for-federal-income-tax-purposes
16 derived from or connected with sources within in this State;

17 B. The portion of the modifications described in section
18 5122, subsections 1 and 2 that ~~relate~~ relates to income
19 derived from or connected with sources in this State,
20 including any modifications attributable to the nonresident
21 individual as a partner of a partnership, shareholder of an
22 S corporation, member of a limited liability company or
23 beneficiary of an estate or trust; and

24 C. Proceeds from any Maine State Lottery or Tri-state Lotto
25 tickets purchased in this State, including payments received
26 from a 3rd party for the transfer of the rights to future
27 proceeds related to any such tickets.

28
29 **Sec. 7. 36 MRSA §5215, sub-§3, ¶A,** as amended by PL 1997, c.
30 761, §3, is further amended to read:

31 A. With property considered to be qualified investment of
32 at least \$5,000,000 for that taxable year with a situs in
33 the State and placed in service by the taxpayer after
34 January 1, 1979; and

35
36 **Sec. 8. 36 MRSA §5215, sub-§3, ¶B,** as amended by PL 1999, c.
37 708, §44, is further amended to read:

38 B. With payroll records and reports substantiating that at
39 least 100 new jobs attributable to the operation of property
40 considered to be qualified investment were created in the
41 24-month period following the date the property was placed
42 in service. To assess the continuing nature of the jobs,
43 the taxpayer must demonstrate that the new jobs credit base
44 is at least \$700,000 for the taxable year of the qualified
45 federal credit or for either of the next 2 calendar years.
46 The \$700,000 must be adjusted proportionally for any change

2 in Title 26, section 1043, subsection 2 wages from \$7,000.
3 With respect to new jobs created after August 1, 1998, but
4 before October 1, 2001, the employer must also demonstrate
5 that the qualifying jobs are covered by a retirement program
6 subject to the Employee Retirement Income Security Act of
7 1974, 29 United States Code, Sections 101 to 1461, as
8 amended; that group health insurance is provided for
9 employees in those positions; and that the wages for those
10 positions, calculated on a calendar year basis, are greater
11 than the most recent average per-capita-income annual wage
12 in the labor market area in which the employee is employed;
and.

14 **Sec. 9. 36 MRSA §5217-A**, as amended by PL 1991, c. 591, Pt.
15 N, §16 and affected by §17, is further amended to read:

16 **§5217-A. Income tax paid to other taxing jurisdiction**

17
18 A resident individual is allowed a credit against the tax
19 otherwise due under this Part, excluding the tax imposed by
20 section 5203-A, for the amount of income tax imposed on that
21 individual for the taxable year by another state of the United
22 States, a political subdivision of any such state, the District
23 of Columbia or any political subdivision of a foreign country
24 that is analogous to a state of the United States with respect to
25 income subject to tax under this Part that is derived from
26 sources in that taxing jurisdiction ~~also subject to tax under~~
27 this Part. In determining whether income is derived from sources
28 in another jurisdiction, the assessor may not employ the law of
29 the other jurisdiction but shall instead assume that a statute
30 equivalent to section 5142 applies in that jurisdiction. The
31 credit, for any of the specified taxing jurisdictions, may not
32 exceed the proportion of the tax otherwise due under this Part,
33 excluding the tax imposed by section 5203-A, that the amount of
34 the taxpayer's Maine adjusted gross income derived from sources
35 in that taxing jurisdiction bears to the taxpayer's entire Maine
36 adjusted gross income; provided except that, when a credit is
37 claimed for taxes paid to both a state and a political
38 subdivision of a state, the total credit allowable for those
39 taxes does not exceed the proportion of the tax otherwise due
40 under this Part, excluding the tax imposed by section 5203-A,
41 that the amount of the taxpayer's Maine adjusted gross income
42 derived from sources in the other state bears to the taxpayer's
43 entire Maine adjusted gross income.

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45 **Sec. 10. 36 MRSA §5218**, as amended by PL 2003, c. 20, Pt. FF,
46 §1, is further amended to read:

47 **§5218. Income tax credit for child care expenses**

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1. **Resident taxpayer.** A resident individual is allowed a credit against the tax otherwise due under this Part in the amount of 25% of the federal tax credit allowable for child and dependent care expenses in the same tax year, except that for tax years beginning in 2003, 2004 and 2005, the applicable percentage is 21.5% instead of 25%.

2. **Nonresident or part-year resident taxpayer.** A nonresident ~~or part-year resident~~ individual is allowed a credit against the tax otherwise due under this Part in the amount of 25% of the federal tax credit allowable for child and dependent care expenses multiplied by the ratio of the individual's Maine adjusted gross income, as defined in section 5102, subsection 1-C, paragraph B, to the ~~nonresident's~~ individual's entire federal adjusted gross income, as modified by section 5122, except that for tax years beginning in 2003, 2004 and 2005, the applicable percentage is 21.5% instead of 25%.

2-A. Part-year resident taxpayer. An individual who files a return as a part-year resident in accordance with section 5224-A is allowed a credit against the tax otherwise due under this Part in the amount of 25% of the federal tax credit allowable for child and dependent care expenses multiplied by a ratio, the numerator of which is the individual's Maine adjusted gross income as defined in section 5102, subsection 1-C, paragraph A for that portion of the taxable year during which the individual was a resident plus the individual's Maine adjusted gross income as defined in section 5102, subsection 1-C, paragraph B for that portion of the taxable year during which the individual was a nonresident and the denominator of which is the individual's entire federal adjusted gross income, as modified by section 5122.

3. **Quality child care services.** The credit provided by subsections 1 and 2 and 2-A doubles in amount if the child care expenses were incurred through the use of quality child care services. ~~As used in this section, unless the context otherwise indicates, "quality child care services" has the meaning set forth as defined~~ in section 5219-Q, subsection 1.

4. **Refund.** The credit allowed by this section may result in a refund of up to \$500. In the case of a nonresident individual, the refundable portion of the credit may not exceed \$500 multiplied by the ratio of the individual's Maine adjusted gross income, as defined in section 5102, subsection 1-C, paragraph B, to the individual's entire federal adjusted gross income, as modified by section 5122. In the case of an individual who files a return as a part-year resident in accordance with section 5224-A, the refundable portion of the credit may not exceed \$500 multiplied by a ratio, the numerator

2 of which is the individual's Maine adjusted gross income as
4 defined in section 5102, subsection 1-C, paragraph A for that
6 portion of the taxable year during which the individual was a
8 resident plus the individual's Maine adjusted gross income as
defined in section 5102, subsection 1-C, paragraph B for that
portion of the taxable year during which the individual was a
nonresident and the denominator of which is the individual's
entire federal adjusted gross income, as modified by section 5122.

10 **Sec. 11. 36 MRSA §5220, sub-§§3 and 4**, as enacted by P&SL 1969,
12 c. 154, §F, §1, are amended to read:

14 **3. Resident estates or trusts.** Every resident estate or
16 trust ~~which is required to file a federal income tax return~~, that
18 has for the taxable year:

- 20 A. Any Maine taxable income as defined in section 5163; or
- 22 B. Gross income of \$10,000 or more, regardless of the
24 amount of Maine taxable income;

26 **4. Certain nonresident estates or trusts.** Every nonresident
28 estate or trust ~~which that has for the taxable year has--from~~
30 ~~sources within this State;~~

- 32 A. Any Maine taxable income, as determined under section
34 5175, subsection 2; or
- 36 B. Gross income of \$600 \$10,000 or more, regardless of the
38 amount of Maine taxable income;

40 **Sec. 12. 36 MRSA §6652, sub-§1**, as amended by PL 2001, c. 396,
42 §45, is further amended to read:

44 **1. Generally.** A person against whom taxes have been
46 assessed pursuant to Part 2, except for chapters 111 and 112,
48 with respect to eligible property and who has paid those taxes is
50 entitled to reimbursement of those taxes from the State as
provided in this chapter. For purposes of this chapter, a tax
applied as a credit against a tax assessed pursuant to chapter
111 or 112 is a tax assessed pursuant to chapter 111 or 112.
Eligible property is subject to reimbursement pursuant to this
chapter for up to 12 property tax years, but the 12 years must be
reduced by one year for each year during which a taxpayer
included the same property in its investment credit base under
section 5219-D, 5219-E or 5219-M and claimed the credit provided
in one or more of those sections on its income tax return, and
reimbursement may not be made for taxes assessed in a year in
which one or more of those credits is taken. A successor in
interest of a person against whom taxes have been assessed with

2 respect to eligible property is entitled to reimbursement
3 pursuant to this section, whether the tax was paid by the person
4 assessed or by the successor, as long as a transfer of the
5 property in question to the successor has occurred and the
6 successor is the owner of the property as of August 1st, of the
7 year in which a claim for reimbursement may be filed pursuant to
8 section 6654. For purposes of this paragraph, "successor in
9 interest" includes the initial successor and any subsequent
10 successor. When an eligible successor in interest exists, the
11 successor is the only person to whom reimbursement under this
12 chapter may be made with respect to the transferred property.

13 **Sec. 13. 36 MRSA §6753, sub-§12**, as amended by PL 1999, c.
14 388, §2, is further amended to read:

15 **12. Qualified employees.** "Qualified employees" means new,
16 full-time employees hired in this State by a qualified business
17 and for whom a retirement program subject to the Employee
18 Retirement Income Security Act of 1974, 29 United States Code,
19 Sections 101 to 1461, as amended, and group health insurance are
20 provided, and whose income derived from employment with the
21 applicant, calculated on a calendar year basis is greater than
22 the most recent average annual ~~per-capita--income~~ wage in the
23 county in which the qualified employee is employed and whose
24 state income withholding taxes are subject to reimbursement to
25 the qualified business under this chapter. "Qualified employees"
26 must be residents of this State.
27

28 **Sec. 14. Application.** That section of this Act that amends
29 the Maine Revised Statutes, Title 36, section 5220, subsections 3
30 and 4 applies to tax years beginning on or after January 1, 2003.'
31

32 SUMMARY

33 This is the minority report of the committee. The amendment
34 replaces the bill. The amendment makes the following changes to
35 the laws governing taxation.

36 1. It corrects a conflict between the Maine Revised
37 Statutes, Title 36, section 1861-A and section 1951-A regarding
38 an individual's use tax responsibility to the State by clarifying
39 that items with a purchase price of more than \$5,000 must be
40 reported separately in the same manner as sales made by retailers
41 as required by Title 36, section 1951-A.
42

43 2. It clarifies the administrative requirements pertaining
44 to the sale of a controlling interest in real property in the
45 real estate transfer tax law, consistent with statutory changes
46 enacted in 2002.
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2 3. It defines "primary recipient" for purposes of the
pension income deduction and clarifies the treatment of early
withdrawals and lump sum distributions.

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6 4. It clarifies that the adjusted gross income described in
Title 36, section 5142 is the Maine adjusted gross income defined
in section 5102, subsection 1-C, paragraph B and taxed by section
8 5111, subsection 4 and that the Maine adjusted gross income of a
10 nonresident individual includes the individual's share of income,
deductions and modifications attributable to Maine-source income
12 of a partnership or limited liability company, estate, trust or S
corporation. These changes conform to current agency practice.

14 5. It provides that the proceeds from the sale of the
future income stream derived from a lottery ticket purchased in
16 Maine is Maine-source income subject to Maine income tax.

18 6. It clarifies that the credit for income tax paid to
another taxing jurisdiction is limited to tax paid with respect
20 to income that Maine recognizes as being derived from sources in
the other taxing jurisdiction. The changes conform to current
22 agency practice.

24 7. It clarifies the calculation of the credit for child
care expenses by part-year residents. The changes conform to
26 current agency practice. The bill also deletes superfluous
verbiage.

28
30 8. It makes it clear that the refundable portion of the
credit for child care expenses must be prorated for persons who
were not Maine residents for any part of the year. The changes
32 conform to current agency practice.

34 9. It eliminates the requirement to file a Maine income tax
return for estates and trusts that had gross income less than
36 \$10,000 and no Maine taxable income.

38 10. It amends the business equipment tax reimbursement
statutes to provide that business equipment tax reimbursement is
40 available, and limited to, a successor in interest that owns
eligible business property on August 1st of the year in which a
42 claim may be made.

44 11. It modifies the standards for a qualified employee for
purposes of the jobs and investment tax credit and the Maine
46 Employment Tax Increment Financing Act to reflect average annual
wages rather than per capita income. Per capita income data by
48 county are not available.

FISCAL NOTE REQUIRED
(See attached)



121st Maine Legislature
Office of Fiscal and Program Review

LD 1470

An Act To Make Minor Substantive Changes to the Tax Laws

LR 1978(03)

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Taxation

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Minor revenue impact - General Fund