

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1470

H.P. 1075

House of Representatives, March 27, 2003

An Act To Make Minor Substantive Changes to the Tax Laws

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

Reference to the Committee on Taxation suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative LEMOINE of Old Orchard Beach.
Cosponsored by Senator STANLEY of Penobscot and
Representatives: PERRY of Bangor, TARDY of Newport.

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

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Sec. 1. 36 MRSA §151, 2nd ¶, as amended by PL 2001, c. 583, §1, is further amended to read:

If a request for reconsideration is filed within the specified time period, the assessor shall reconsider the assessment or the determination. If the petitioner has so requested in the petition, the assessor shall hold an informal conference with the petitioner to receive additional information and to hear arguments regarding the protested assessment or determination. The assessor shall give the petitioner 10 working days' notice of the time and place of the conference. The conference may be held with less than 10 working days' notice if a mutually convenient time and place can be arranged. The reconsideration, with or without an informal conference, is not an "adjudicatory proceeding" within the meaning of that term in the Maine Administrative Procedure Act. If the requested reconsideration involves a denial or deemed denial of a refund claim, a refund claim with respect to which a conference has been requested under section 5280 or an assessment that is paid in full or part and the assessor fails to mail to the taxpayer a decision on the reconsideration within 9 months after the reconsideration request was filed, the taxpayer may elect but is not obligated to deem the request for reconsideration denied. The taxpayer elects to deem the reconsideration denied by filing in Superior Court a petition for review of the deemed denial. The deemed denial constitutes final agency action and is subject to court review as otherwise provided in this section. The taxpayer may not make the deemed denial election after either the assessor's reconsideration decision has been received by the taxpayer or the expiration of 9 4 years following the filing of the reconsideration request, whichever occurs first. Notwithstanding any other provision of law, any claim for credit or refund of any tax imposed under this Title is deemed denied 10 4 years after it was filed if the claim has not previously been allowed or denied as final agency action. A deemed denial constitutes final agency action.

Sec. 2. 36 MRSA §191, sub-§3-A is enacted to read:

3-A. Additional restrictions for proprietary information provided to the assessor. Information and materials provided in confidence to the assessor and used by the bureau for the purpose of preparing legislation or legislative analysis, including the preparation of fiscal notes on behalf of the Office of Fiscal and Program Review, are to be accorded the same confidentiality as established by this section for tax information.

2 **Sec. 3. 36 MRSA §1504, sub-§9, ¶D**, as enacted by PL 1987, c.
196, §9, is repealed and the following enacted in its place:

4 D. Each marina or boat yard leasing, renting or otherwise
6 providing storage, mooring or docking space to watercraft
8 not registered in this State for 10 or more consecutive days
 between April 15th of any year and April 15th of the next
 year shall maintain a list of all such watercraft. The list
 must include, with respect to each watercraft:

10 (1) The name of the watercraft and its hailing port,
12 if any;

14 (2) The name and address of the owner of the
 watercraft;

16 (3) The registration number, documentation number or
18 other number assigned to the watercraft and the state
 or country that assigned the number;

20 (4) The approximate length of the watercraft;

22 (5) The manufacturer and model year of the watercraft;
24 and

26 (6) The total amount of time during the year that the
28 marina or boatyard maintaining the list leased, rented
 or otherwise provided storage, mooring or docking space
 to the watercraft.

30 The list must be available for inspection during normal
32 business hours by law enforcement officers and by municipal
34 officials, and a copy must be submitted to the State Tax
 Assessor upon request. Marina and boat yard owners shall
 retain their lists for 3 years.

36 **Sec. 4. 36 MRSA §1760, sub-§23-C, ¶A**, as enacted by PL 1999,
38 c. 759, §2 and affected by §5, is amended to read:

40 A. Motor vehicles, except automobiles rented for a period
42 of less than one year, all-terrain vehicles as defined in
44 Title 12, section 7851 and snowmobiles as defined in Title
 12, section 7821;

46 **Sec. 5. 36 MRSA §5122, sub-§1, ¶D**, as amended by PL 1983, c.
855, §15, is further amended to read:

48 D. ~~The~~ For income tax years beginning before January 1,
50 2002, the amount of any net operating loss in the taxable
 year ~~which~~ that has been carried back to previous years

2 pursuant to the ~~United-States-Internal-Revenue~~ Code, Section
172;

4 **Sec. 6. 36 MRSA §5122, sub-§2, ¶H**, as amended by PL 2001, c.
559, Pt. J, §2, is further amended to read:

6
8 H. For each taxable year subsequent to the year of the
loss, an amount equal to the absolute value of the net
operating loss arising from tax years beginning on or after
10 January 1, 1989, but before January 1, 1993, and the
absolute value of the amount of any net operating loss
12 arising from tax years beginning on or after January 1,
2002, for which federal adjusted gross income was increased
14 in accordance with subsection 1, paragraph H and that
pursuant to the Code, Section 172 was carried back for
16 federal income tax purposes, less the absolute value of loss
used in the taxable year of loss to offset any addition
18 modification required by subsection 1, but only to the
extent that:

20 (1) Maine taxable income is not reduced below zero;

22 (2) The taxable year is within the allowable federal
24 period for carry-over; and

26 (3) The amount has not been previously used as a
modification pursuant to this subsection;

28 **Sec. 7. 36 MRSA §5142, sub-§1, ¶C**, as enacted by PL 1993, c.
30 478, §1, is amended to read:

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

36 **Sec. 8. 36 MRSA §5200-A, sub-§1, ¶B**, as amended by PL 1987, c.
38 504, §18, is further amended to read:

40 B. ~~The~~ For income tax years beginning before January 1,
2002, the amount of any net operating loss in the taxable
42 year which that has been carried back to previous taxable
years pursuant to the Code, Section 172;

44 **Sec. 9. 36 MRSA §5200-A, sub-§2, ¶H**, as amended by PL 2001, c.
46 559, Pt. J, §4, is further amended to read:

48 H. For each taxable year subsequent to the year of the
loss, an amount equal to the absolute value of the net
operating loss arising from tax years beginning on or after
50

2 January 1, 1989 but before January 1, 1993 and the absolute
value of the amount of any net operating loss arising from
4 tax years beginning on or after January 1, 2002 that,
pursuant to the Code, Section 172, was carried back for
6 federal income tax purposes, less the absolute value of loss
used in the taxable year of loss to offset any addition
modification required by subsection 1, but only to the
8 extent that:

10 (1) Maine taxable income is not reduced below zero;

12 (2) The taxable year is within the allowable federal
period for carry-over; and

14 (3) The amount has not been previously used as a
16 modification pursuant to this subsection;

18 **Sec. 10. 36 MRSA §5200-A, sub-§2, ¶J,** as amended by PL 2001, c.
559, Pt. GG, §16 and affected by §26, is further amended to read:
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J. An amount equal to an income tax refund to the taxpayer
22 by this State or another state of the United States that is
included in that taxpayer's federal taxable income for the
24 taxable year under the Code, but only to the extent that:

26 (1) Maine net income is not reduced below zero; and

28 (2) The amount to be refunded from this State or
another state of the United States has not been
30 previously used as a modification pursuant to this
subsection.
32

If this modification ~~amount~~ results in Maine net income that
34 is less than zero for the taxable year, the excess negative
modification amount may be carried ~~back-~~or~~~~ forward in the
36 same manner as a net operating loss deduction ~~carry-back-~~or~~~~
~~carry-forward~~ to a taxable year that is within the allowable
38 federal period for a ~~carry-back-~~or~~~~ carry-forward carrying
forward net operating losses, subject to the above
40 limitations;

42 **Sec. 11. 36 MRSA §5215, sub-§3, ¶A,** as amended by PL 1997, c.
761, §3, is further amended to read:
44

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

2 **Sec. 12. 36 MRSA §5215, sub-§3, ¶B**, as amended by PL 1999, c.
708, §44, is further amended to read:

4 B. With payroll records and reports substantiating that at
6 least 100 new jobs attributable to the operation of property
8 considered to be qualified investment were created in the
10 24-month period following the date the property was placed
12 in service. To assess the continuing nature of the jobs,
14 the taxpayer must demonstrate that the new jobs credit base
16 is at least \$700,000 for the taxable year of the qualified
18 federal credit or for either of the next 2 calendar years.
20 The \$700,000 must be adjusted proportionally for any change
22 in Title 26, section 1043, subsection 2 wages from \$7,000.
24 With respect to new jobs created after August 1, 1998, but
before October 1, 2001, the employer must also demonstrate
that the qualifying jobs are covered by a retirement program
subject to the Employee Retirement Income Security Act of
1974, 29 United States Code, Sections 101 to 1461, as
amended; that group health insurance is provided for
employees in those positions; and that the wages for those
positions, calculated on a calendar year basis, are greater
than the average ~~per-capita-income~~ annual wage in the labor
market area in which the employee is employed; ~~and.~~

26 **Sec. 13. 36 MRSA §5218, sub-§4**, as enacted by PL 2001, c. 396,
§38, is amended to read:

28 **4. Refund.** The credit allowed by this section may result
30 in a refund of up to \$500. In the case of a nonresident
32 individual, the refundable portion of the credit may not exceed
34 \$500 multiplied by the ratio of the individual's Maine adjusted
36 gross income, as defined in section 5102, subsection 1-C,
38 paragraph B, to the individual's entire federal adjusted gross
40 income, as modified by section 5122. In the case of an
42 individual who files a return as a part-year resident in
44 accordance with section 5224-A, the refundable portion of the
46 credit may not exceed \$500 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.

48 **Sec. 14. 36 MRSA §5220, sub-§§3 and 4**, as enacted by P&SL 1969,
c. 154, §F, §1, are amended to read:

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

4 A. Any Maine taxable income as defined in section 5163; or

6 B. Gross income of \$10,000 or more, regardless of the
8 amount of Maine taxable income;

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

14 A. Any Maine taxable income, as determined under section
16 5175, subsection 2; or

18 B. Gross income of \$600 ~~\$10,000~~ or more, regardless of the
amount of Maine taxable income;

20 **Sec. 15. 36 MRSA §6753, sub-§12,** as amended by PL 1999, c.
22 388, §2, is further amended to read:

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

36 **Sec. 16. Effective date.** That section of this Act that amends
the Maine Revised Statutes, Title 36, section 151, 2nd paragraph
38 takes effect January 1, 2004 and applies to any request for
reconsideration or claim for credit or refund for which final
40 agency action has not occurred as of that date.

42 **Sec. 17. Application.** Those sections of this Act that amend
the Maine Revised Statutes, Title 36, section 5122, subsection 1,
44 paragraph D and subsection 2, paragraph H and section 5200-A,
subsection 1, paragraph B and subsection 2, paragraphs H and J
46 apply to tax years beginning on or after January 1, 2002.

2 8. It limits the requirement to add back net operating
4 losses that have been carried back to previous years for federal
income tax purposes to tax years beginning before January 1,
6 2002, consistent with other recent changes in Maine's treatment
of federal net operating loss deductions.

8 9. It eliminates the provision allowing a negative
10 modification amount attributable to subtraction of a state income
tax refund to be carried back to prior years. The negative
12 modification will still be available in carry-forward years.
This change is consistent with statutory changes made in 2002
14 disallowing the use of federal net operating loss carry-backs.

16 10. It modifies the standard for a qualified employee for
purposes of the jobs and investment credit to reflect average
18 annual wages rather than per capita income. Per capita income
data by labor market area are not available.

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

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

28 13. It modifies the standard for a qualified employee for
30 purposes of the Maine Employment Tax Increment Financing Act to
reflect average annual wages rather than per capita income. Per
32 capita income data by county are not available.

34 14. The bill makes grammatical changes.