

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## SECOND REGULAR SESSION-2004

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Legislative Document

No. 1816

H.P. 1338

House of Representatives, December 22, 2003

### An Act Concerning Technical Changes to the Tax Laws

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

Received by the Clerk of the House on December 17, 2003. Referred to the Committee on Taxation pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative LEMOINE of Old Orchard Beach.  
Cosponsored by Senator STANLEY of Penobscot and  
Representatives: CLOUGH of Scarborough, LERMAN of Augusta, McGOWAN of Pittsfield,  
TARDY of Newport, Senator: NASS of York.

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

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**Sec. 1. 36 MRSA §111, sub-§4**, as enacted by PL 1979, c. 378, §2, is amended to read:

**4. Return.** "Return" means any document, digital file or electronic data transmission containing information required by this Title to be reported to the State Tax Assessor.

**Sec. 2. 36 MRSA §135, sub-§2**, as amended by PL 1995, c. 281, §4 and PL 1997, c. 526, §14, is further amended to read:

**2. Bureau of Revenue Services.** Returns filed under this Title or microfilm reproductions or digital images of those returns must be preserved for 3 years and thereafter until the State Tax Assessor orders their destruction.

**Sec. 3. 36 MRSA §1752, sub-§12-A** is enacted to read:

**12-A. Rural community health center.** "Rural community health center" means a person that delivers, or provides facilities for the delivery of, comprehensive primary health care in a place or territory that is classified as rural according to the most recent federal decennial census.

**Sec. 4. 36 MRSA §1752, sub-§14-E** is enacted to read:

**14-E. School.** "School" means a public or incorporated nonprofit primary, secondary or postsecondary educational institution that has a regular faculty, curriculum and organized body of pupils or students in attendance throughout the usual school year and that keeps and furnishes to students and others records required and accepted for entrance to schools of secondary, collegiate or graduate rank.

**Sec. 5. 36 MRSA §1760, sub-§16**, as amended by PL 1999, c. 708, §25, is further amended to read:

**16. Hospitals, research centers, churches and schools.** Sales to incorporated hospitals, incorporated nonprofit nursing homes licensed by the Department of Human Services, incorporated nonprofit residential care facilities licensed by the Department of Human Services, incorporated nonprofit home health agencies certified under the United States Social Security Act of 1965, Title XVIII, as amended, incorporated nonprofit rural community health centers ~~engaged in, or providing facilities for, the delivery of comprehensive primary health care,~~ incorporated nonprofit dental health centers, institutions incorporated as nonprofit corporations for the sole purpose of conducting medical research or for the purpose of establishing and maintaining

laboratories for scientific study and investigation in the field  
2 of biology or ecology or operating educational television or  
radio stations, schools, incorporated nonprofit organizations or  
4 their affiliates whose purpose is to provide literacy assistance  
or free clinical assistance to children with dyslexia and  
6 regularly organized churches or houses of religious worship,  
excepting sales, storage or use in activities that are mainly  
8 commercial enterprises. "Schools" means incorporated nonprofit  
educational institutions, including institutions empowered to  
10 confer educational, literary or academic degrees, that have a  
regular faculty, curriculum and organized body of pupils or  
12 students in attendance throughout the usual school year and that  
keep and furnish to students and others records required and  
14 accepted for entrance to schools of secondary, collegiate or  
graduate rank, no part of the net earnings of which inures to the  
16 benefit of any individual.

18 **Sec. 6. 36 MRSA §1760, sub-§19** is amended to read:

20 **19. Schools.** Rental charged for living quarters, sleeping  
or housekeeping accommodations to any student necessitated by  
22 attendance at a school as defined in subsection 16.

24 **Sec. 7. 36 MRSA §1760, sub-§58**, as enacted by PL 1987, c. 343,  
§5, is amended to read:

26 **58. Portable classrooms.** Sales of tangible personal  
28 property to be physically incorporated in and become a part of a  
portable classrooms classroom for lease to schools entitled to  
30 exemption under subsection 16 a school. If the portable  
classrooms are classroom is used for an otherwise taxable use  
32 within 2 years from the date of the first use, the lessor shall  
become is liable for the use tax based on the original sale price.

34 **Sec. 8. 36 MRSA §1760, sub-§61**, as amended by PL 1999, c. 414,  
§21, is further amended to read:

38 **61. Construction contracts with exempt organizations.**  
Sales to a construction contractor or its subcontractor of  
40 tangible personal property, to a construction contractor, that  
are is to be physically incorporated in, and become a permanent  
42 part of, real property for sale to any organization or government  
agency provided exemption under this section, except as otherwise  
44 provided.

46 **Sec. 9. 36 MRSA §1760, sub-§64**, as amended by PL 1995, c. 462,  
Pt. B, §9, is further amended to read:

48 **64. Schools and school-sponsored organizations.** Sales of  
50 tangible personal property and taxable services by public and

2 private elementary and secondary schools ~~that otherwise qualify~~  
3 ~~as schools under subsection 16,~~ and by student organizations  
4 sponsored by those schools, including booster clubs and student  
5 or parent-teacher organizations, as long as the profits from such  
6 the sales are used to benefit those schools or student  
7 organizations or are used for a charitable purpose.

8 **Sec. 10. 36 MRSA §1760, sub-§76,** as enacted by PL 1991, c.  
9 317, is amended to read:

10 **76. Aircraft parts.** The sale or use in this State of  
11 replacement or repair parts of an aircraft ~~in this State when~~  
12 used by a scheduled airline in the performance of service ~~under~~  
13 ~~federal regulations of the Civil Aeronautics Board, Part 298 or~~  
14 under 49 United States Code, ~~Section 1371~~ Subtitle VII and  
15 Federal Aviation Administration regulations.

16  
17 **Sec. 11. 36 MRSA §2903, sub-§4,** as enacted by PL 1997, c. 738,  
18 §4, is amended to read:

19 **4. Exemptions.** ~~This subsection~~ The tax imposed by this  
20 section does not apply to internal combustion engine fuel:

- 21  
22  
23 A. Sold wholly for exportation from this State;
- 24  
25 B. Brought into this State in the ordinary standardized  
26 equipment fuel tank attached to and a part of a motor  
27 vehicle and used in the operation of that vehicle in this  
28 State;
- 29  
30 C. Sold in bulk to any political subdivision of this State;
- 31  
32 D. Bought or used by any person to propel jet or turbojet  
33 engine aircraft in international ~~flight~~ flights;
- 34  
35 E. Brought into this State in the fuel tanks of an  
36 aircraft; or
- 37  
38 F. On which the collection of the tax imposed by this  
39 section is precluded by federal law or regulation.

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41 **Sec. 12. 36 MRSA §3204-A, sub-§7,** as amended by PL 1997, c.  
42 738, §11, is further amended to read:

43 **7. Kerosene for retail sale.** Kerosene prepackaged for home  
44 use or delivered into a separate tank for retail sale, in which  
45 case the excise tax must be remitted by licensed users pursuant  
46 to section 3207, rather than by the supplier; and  
47  
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2           **Sec. 13. 36 MRSA §5122, sub-§1, ¶N**, as repealed and replaced  
by PL 2003, c. 479, §2, is amended to read:

4           N. With respect to property placed in service during the  
taxable year, an amount equal to the net increase in  
6           depreciation or expensing attributable to:

8                   (1) For taxable years beginning on or after January 1,  
2002 but prior to January 1, ~~2005~~ 2006, a 30% bonus  
10                  depreciation deduction claimed by the taxpayer pursuant  
to Section 101 of the federal Job Creation and Worker  
12                  Assistance Act of 2002, Public Law 107-147 with respect  
to property placed in service during the taxable year;

14                   (2) For taxable years beginning on or after January 1,  
2002 but prior to January 1, 2006, a 50% bonus  
16                  depreciation deduction claimed by the taxpayer pursuant  
to Section 201 of the federal Jobs and Growth Tax  
18                  Relief Reconciliation Act of 2003, Public Law 108-27  
with respect to property placed in service during the  
20                  taxable year; and

22                   (3) For taxable years beginning on or after January 1,  
2003 but prior to January 1, 2006, the increase in  
24                  aggregate cost claimed under Section 179 of the Code  
pursuant to Section 202 of the federal Jobs and Growth  
26                  Tax Relief Reconciliation Act of 2003, Public Law  
28                  108-27;

30           **Sec. 14. 36 MRSA §5122, sub-§2, ¶H**, as amended by PL 2003, c.  
390, §32 and affected by §53, is further amended to read:

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

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

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

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

6 **Sec. 15. 36 MRSA §5200-A, sub-§1, ¶N**, as repealed and replaced  
8 by PL 2003, c. 479, §5, is amended to read:

10 N. With respect to property placed in service during the  
12 taxable year, an amount equal to the net increase in  
depreciation or expensing attributable to:

14 (1) For taxable years beginning on or after January 1,  
16 2002 but prior to January 1, ~~2005~~ 2006, a 30% bonus  
depreciation deduction claimed by the taxpayer pursuant  
18 to Section 101 of the federal Job Creation and Worker  
Assistance Act of 2002, Public Law 107-147 with respect  
to property placed in service during the taxable year;

20 (2) For taxable years beginning on or after January 1,  
22 2002 but prior to January 1, 2006, a 50% bonus  
depreciation deduction claimed by the taxpayer pursuant  
24 to Section 201 of the federal Jobs and Growth Tax  
Relief Reconciliation Act of 2003, Public Law 108-27  
26 with respect to property placed in service during the  
taxable year; and

28 (3) For taxable years beginning on or after January 1,  
30 2003 but prior to January 1, 2006, the increase in  
aggregate cost claimed under Section 179 of the Code  
32 pursuant to Section 202 of the federal Jobs and Growth  
Tax Relief Reconciliation Act of 2003, Public Law  
34 108-27;

36 **Sec. 16. 36 MRSA §5206-F**, as enacted by PL 1997, c. 746, §19  
and affected by §24, is amended to read:

38 **§5206-F. Time for filing returns**

40 The franchise tax return required by section 5220,  
42 subsection 6 must be filed on or before the 15th day of the 3rd  
month following the end of the financial institution's fiscal  
44 year. ~~A financial institution required to make and file such a  
return shall, without assessment, notice or demand, pay any tax  
46 due to the State Tax Assessor on or before the date established  
by this section for filing the return.~~

48 **Sec. 17. 36 MRSA §5227**, as amended by PL 1997, c. 746, §22  
50 and affected by §24, is further amended to read:

2       **§5227. Time for filing returns**

4           The income tax return required by this Part must be filed on  
6           or before the date a federal income tax return, without regard to  
8           extension, is due to be filed. ~~A taxpayer required to make and  
10           file such a return shall, without assessment, notice or demand,  
12           pay any tax due thereon to the assessor on or before the date  
14           fixed for filing such return determined without regard to any  
16           extension of time for filing the return.~~

12           **Sec. 18. 36 MRSA §5227-A** is enacted to read:

14       **§5227-A. Requirement to file amended Maine returns**

16           **1. Amended return required.** A taxpayer shall file an  
18           amended Maine return as required in this Part whenever the  
20           taxpayer files an amended federal return affecting the taxpayer's  
22           liability under this Part, whenever the Internal Revenue Service  
24           changes or corrects any item affecting the taxpayer's liability  
26           under this Part or whenever for any reason there is a change or  
28           correction affecting the taxpayer's liability under this Part.

24           **2. Amended return filed.** The amended Maine return must be  
26           filed within 90 days of the final determination of the change or  
28           correction or the filing of the federal amended return.

28           **3. Contents of amended return.** The amended Maine return  
30           must indicate the change or correction and the reason for that  
32           change or correction. The amended return constitutes an admission  
34           as to the correctness of the change unless the taxpayer includes  
36           with the return a written explanation of the reason the change or  
38           correction is erroneous. If the taxpayer files an amended federal  
40           return, a copy of the amended federal return must be attached to  
42           the amended Maine return.

36           **4. Additional requirements.** The State Tax Assessor may  
38           require additional information to be filed with the amended Maine  
40           return. The assessor may prescribe exceptions to the requirements  
42           of this section.

42           **Sec. 19. 36 MRSA §5243**, as repealed and replaced by PL 1991,  
44           c. 546, §35, is repealed.

44           **Sec. 20. 36 MRSA §5278, sub-§4**, as amended by PL 1989, c. 508,  
46           §24, is further amended to read:

48           **4. Notice of change or correction.** If a taxpayer is  
50           required by section 5243 5227-A to file an amended Maine return,  
a claim for credit or refund of any resulting overpayment of the



2 tax shall must be filed by the taxpayer within 2 years from the  
time the filing of the amended return was required. The amount  
4 of the credit or refund shall may not exceed the amount of the  
reduction in tax attributable to the federal amendment. This  
6 subsection shall does not affect the time within which or the  
amount for which a claim for credit or refund may be filed apart  
from this subsection.

8  
10 **Sec. 21. 36 MRSA §5311, sub-§3**, as enacted by P&SL 1969, c.  
154, §F, is repealed.

12 **Sec. 22. 36 MRSA §5311, sub-§4**, as enacted by PL 1977, c. 165,  
14 §7, is repealed.

### 16 SUMMARY

18 This bill makes the following changes to the laws governing  
taxation.

20 The bill clarifies that the Department of Administrative and  
22 Financial Services, Bureau of Revenue Services must preserve  
electronically transmitted tax returns for at least 3 years, and  
24 that returns may be preserved in the form of digital images  
rather than microfilm reproductions.

26 The bill adds definitions of "rural community health center"  
28 and "school" to the sales and use tax law, repeals language that  
is definitional in nature from the statute exempting these types  
30 of entities and repeals cross-references to the repealed language.

32 The bill clarifies that the sales tax exemption for sales to  
contractors of materials that will be incorporated into real  
34 estate of an exempt entity includes sales to subcontractors.

36 The bill replaces outdated references to federal laws and  
regulations governing air carriers from the sales tax exemption  
38 for parts used by scheduled airlines. The existing statute refers  
to regulations of the Civil Aeronautics Board, which no longer  
40 exists, and cites a federal law that has been repealed.

42 The bill clarifies the application of the exemption  
provisions in the gasoline tax law.

44 The bill expands the special fuel tax exemption for kerosene  
46 delivered to a separate tank for retail sale to include kerosene  
prepackaged for home use. The Bureau of Revenue Services is  
48 currently applying this interpretation administratively.

2           The bill corrects the applicable tax years for the  
provisions relating to the modification of federal adjusted gross  
4           income for property eligible for federal bonus depreciation for  
individual income tax computation purposes.

6           The bill adds a reference to net operating loss provisions  
for clarity and consistency with other statutory provisions.

8  
10           The bill deletes redundant provisions that require taxpayers  
to make timely payment of income and franchise taxes.

12           The bill relocates an inappropriately placed requirement to  
file amended returns into the chapter of law governing the filing  
14           of returns, in order to clarify that amended returns are returns  
for purposes of determining the timeliness of assessments,  
16           requests for appeal and refund requests.

18           The bill repeals a cross-reference to the provision repealed  
in the Maine Revised Statutes, Title 36, section 5227.

20  
22           The bill repeals a redundant statute authorizing the State  
Tax Assessor to name the assessor's employees as agents to  
collect income taxes.

24           The bill also makes various grammatical changes.