

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 1165

H.P. 808

House of Representatives, March 8, 2005

### An Act To Encourage the Preservation of Affordable Housing

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Reference to the Committee on Taxation suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative GLYNN of South Portland.

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

4 **Sec. 1. 36 MRSA §4641, sub-§2-B** is enacted to read:

6 **2-B. Multifamily affordable housing property.** "Multifamily  
8 affordable housing property" means a decent, safe and sanitary  
dwelling, apartment building or other living accommodation that  
includes at least 6 units and:

10 A. At least 20% of the units have restricted rents  
affordable to households earning no more than 80% of the  
12 area median income as determined by the United States  
Department of Housing and Urban Development;

14 B. The property is funded by the United States Department  
of Housing and Urban Development, the United States  
16 Department of Agriculture or the Maine State Housing  
Authority; or

20 C. The property qualifies for low-income housing credits  
under Section 42 of the Code.

22 **Sec. 2. 36 MRSA §4641-C, sub-§19,** as amended by PL 2001, c.  
24 559, Pt. I, §7 and affected by §15, is further amended to read:

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

34 **Sec. 3. 36 MRSA §4641-C, sub-§20,** as enacted by PL 2001, c.  
36 559, Pt. I, §8 and affected by §15, is amended to read:

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

44 **Sec. 4. 36 MRSA §4641-C, sub-§21** is enacted to read:

46 **21. Multifamily affordable housing property.** Any sale or  
48 transfer of a multifamily affordable housing property.

50 **Sec. 5. 36 MRSA §5102, sub-§10-B** is enacted to read:

2 8-C. Multifamily affordable housing property. "Multifamily  
3 affordable housing property" means a decent, safe and sanitary  
4 dwelling, apartment building or other living accommodation that  
5 includes at least 6 units and:

6 A. At least 20% of the units have restricted rents  
7 affordable to households earning no more than 80% of the  
8 area median income as determined by the United States  
9 Department of Housing and Urban Development;

10 B. The property is funded by the United States Department  
11 of Housing and Urban Development, the United States  
12 Department of Agriculture or the Maine State Housing  
13 Authority; or

14 C. The property qualifies for low-income housing credits  
15 under Section 42 of the Code.

16 **Sec. 6. 36 MRSA §5122, sub-§2, ¶Q**, as corrected by RR 2003, c.  
17 1, §38, is amended to read:

18 Q. A fraction of any amount previously added back by the  
19 taxpayer to federal adjusted gross income pursuant to  
20 subsection 1, paragraph N.

21 (1) With respect to property first placed in service  
22 during taxable years beginning in 2002, the adjustment  
23 under this paragraph is available for each year during  
24 the recovery period, beginning 2 years after the  
25 beginning of the taxable year during which the property  
26 was first placed in service. The fraction is equal to  
27 the amount added back under subsection 1, paragraph N  
28 with respect to the property, divided by the number of  
29 years in the recovery period minus 2.

30 (2) With respect to all other property, for the  
31 taxable year immediately following the taxable year  
32 during which the property was first placed in service,  
33 the fraction allowed by this paragraph is equal to 5%  
34 of the amount added back under subsection 1, paragraph  
35 N with respect to the property. For each subsequent  
36 taxable year during the recovery period, the fraction  
37 is equal to 95% of the amount added back under  
38 subsection 1, paragraph N with respect to the property,  
39 divided by the number of years in the recovery period  
40 minus 2.

41 In the case of property expensed pursuant to Section 179 of  
42 the Code, the term "recovery period" means the recovery  
43 period.

2 period that would have been applicable to the property had  
Section 179 not been applied; and

4 **Sec. 7. 36 MRSA §5122, sub-§2, ¶T**, as amended by PL 2003, c.  
705, §12 and affected by §14, is further amended to read:

6  
8 T. For income tax years beginning on or after January 1,  
2002 and before January 1, 2004, an amount equal to the  
10 total premiums spent for long-term care insurance policies  
certified under Title 24-A, section 5075-A as long as the  
12 amount subtracted is reduced by the long-term care premiums  
claimed as an itemized deduction pursuant to section 5125.

14 For income tax years beginning on or after January 1, 2004,  
an amount equal to the total premiums spent for qualified  
16 long-term care insurance contracts certified under Title  
24-A, section 5075-A, as long as the amount subtracted is  
18 reduced by any amount claimed as a deduction for federal  
income tax purposes in accordance with the Code, Section  
20 162(1) and by the long-term care premiums claimed as an  
itemized deduction pursuant to section 5125.; and

22  
24 **Sec. 8. 36 MRSA §5122, sub-§2, ¶U** is enacted to read:

26 U. For income tax years beginning on or after January 1,  
2006, an amount equal to the total capital gains or  
depreciation recapture realized from the sale of multifamily  
affordable housing property. The amount subtracted pursuant  
to this paragraph must be reduced by any amount claimed as a  
deduction for federal income tax purposes.

32 **Sec. 9. 36 MRSA §5200-A, sub-§2, ¶L**, as amended by PL 2003, c.  
20, Pt. EE, §3, is further amended to read:

34  
36 L. An amount equal to the absolute value of any net  
operating loss arising from a tax year beginning or ending  
38 in 2001 for which federal taxable income was increased under  
subsection 1, paragraph M and that, pursuant to Section 102  
40 of the federal Job Creation and Worker Assistance Act of  
2002, Public Law 107-147, was carried back more than 2 years  
42 to the taxable year for federal income tax purposes, but  
only to the extent that:

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

46 (2) The taxable year is either within 2 years prior to  
the year in which the loss arose or within the  
48 allowable federal period for carry-over of net  
operating losses; and

50

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

4 **Sec. 10. 36 MRSA §5200-A, sub-§2, ¶M**, as repealed and replaced  
by PL 2003, c. 479, §6, is amended to read:

6 M. A fraction of any amount previously added back by the  
8 taxpayer to federal taxable income pursuant to subsection 1,  
paragraph N.

10 (1) With respect to property first placed in service  
12 during taxable years beginning in 2002, the adjustment  
under this paragraph is available for each year during  
14 the recovery period, beginning 2 years after the  
beginning of the taxable year during which the property  
16 was first placed in service. The fraction is equal to  
the amount added back under subsection 1, paragraph N  
18 with respect to the property, divided by the number of  
years in the recovery period minus 2.

20 (2) With respect to all other property, for the  
22 taxable year immediately following the taxable year  
during which the property was first placed in service,  
24 the fraction allowed by this paragraph is equal to 5%  
of the amount added back under subsection 1, paragraph  
26 N with respect to the property. For each subsequent  
taxable year during the recovery period, the fraction  
28 is equal to 95% of the amount added back under  
subsection 1, paragraph N with respect to the property,  
30 divided by the number of years in the recovery period  
minus 2.

32 In the case of property expensed pursuant to Section 179 of  
34 the Code, the term "recovery period" means the recovery  
period that would have been applicable to the property had  
36 Section 179 not been applied; and

38 **Sec. 11. 36 MRSA §5200-A, sub-§2, ¶P** is enacted to read:

40 P. For income tax years beginning on or after January 1,  
42 2006, an amount equal to the total capital gains or  
depreciation recapture realized from the sale of multifamily  
44 affordable housing property. The amount subtracted pursuant  
to this paragraph must be reduced by any amount claimed as a  
46 deduction for federal income tax purposes.

## SUMMARY

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4       This bill exempts from the income tax capital gains or  
depreciation recapture associated with the sale of a multifamily  
affordable housing property. It also exempts the sale of a  
6 multifamily affordable housing property from the real estate  
transfer tax.