

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 1305

H.P. 902

House of Representatives, March 15, 2005

### **An Act To Encourage Long-term Holding of Maine Timberland and Sustainable Forest Management**

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Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND

Clerk

Presented by Representative FLOOD of Winthrop.  
Cosponsored by Senator DAMON of Hancock and  
Representatives: BIERMAN of Sorrento, CARR of Lincoln, JOY of Crystal, McCORMICK of  
West Gardiner, MOODY of Manchester, RICHARDSON of Warren, SAVIELLO of Wilton,  
Senator: COURTNEY of York.

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

2

3       **Sec. 1. 36 MRSA §5122, sub-§2, ¶Q,** as corrected by RR 2003, c.  
4 1, §38, is amended to read:

6

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

10

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

20

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

32

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

37

38       **Sec. 2. 36 MRSA §5122, sub-§2, ¶T,** as amended by PL 2003, c.  
39 705, §12 and affected by §14, is further amended to read:

40

41       T. For income tax years beginning on or after January 1,  
42 2002 and before January 1, 2004, an amount equal to the  
43 total premiums spent for long-term care insurance policies  
44 certified under Title 24-A, section 5075-A as long as the  
45 amount subtracted is reduced by the long-term care premiums  
46 claimed as an itemized deduction pursuant to section 5125.

47

48       For income tax years beginning on or after January 1, 2004,  
49 an amount equal to the total premiums spent for qualified  
50 long-term care insurance contracts certified under Title  
24-A, section 5075-A, as long as the amount subtracted is

2 reduced by any amount claimed as a deduction for federal  
income tax purposes in accordance with the Code, Section  
162(1) and by the long-term care premiums claimed as an  
4 itemized deduction pursuant to section 5125+; and

6 **Sec. 3. 36 MRSA §5122, sub-§2, ¶U** is enacted to read:

8 U. For income tax years beginning on or after January 1,  
2015, the gain attributable to the sale of eligible  
10 timberlands as calculated in this paragraph.

12 (1) As used in this paragraph, unless the context  
otherwise indicates, the following terms have the  
14 following meanings.

16 (a) "Commercial harvesting" or "commercially  
harvested" means the harvesting of forest products  
18 that have commercial value.

20 (b) "Eligible timberlands" means land of at least  
10 acres used primarily for the growth of trees to  
22 be commercially harvested. Land that would  
otherwise be included within this definition may  
24 not be excluded because of:

26 (i) Use of the land for multiple public  
recreation activities;

28 (ii) Statutory or governmental restrictions  
30 that prevent commercial harvesting of trees or  
require a primary use of the land other  
32 than commercial harvesting;

34 (iii) Deed restrictions, restrictive  
covenants or organizational charters that  
36 prevent commercial harvesting of trees or  
require a primary use of land other than  
38 commercial harvesting and that were effective  
40 prior to January 1, 1982; or

42 (iv) Past or present multiple use for  
mineral exploration.

44 (c) "Forest products that have commercial value"  
means logs, pulpwood, veneer, bolt wood, wood  
46 chips, stud wood, poles, pilings, biomass, fuel  
wood, Christmas trees, maple syrup, nursery  
48 products used for ornamental purposes, wreaths,  
bough material or cones or other seed products.  
50

2           (2) The following amounts must be subtracted from  
3           federal adjusted gross income:

4           (a) For eligible timberlands held by the taxpayer  
5           for at least a 10-year period beginning on or  
6           after January 1, 2005 but less than an 11-year  
7           period beginning on or after January 1, 2005, 10%  
8           of the gain recognized on the sale of the eligible  
9           timberlands;

10           (b) For eligible timberlands held by the taxpayer  
11           for at least an 11-year period beginning on or  
12           after January 1, 2005 but less than a 12-year  
13           period beginning on or after January 1, 2005, 20%  
14           of the gain recognized on the sale of the eligible  
15           timberlands;

16           (c) For eligible timberlands held by the taxpayer  
17           for at least a 12-year period beginning on or  
18           after January 1, 2005 but less than a 13-year  
19           period beginning on or after January 1, 2005, 30%  
20           of the gain recognized on the sale of the eligible  
21           timberlands;

22           (d) For eligible timberlands held by the taxpayer  
23           for at least a 13-year period beginning on or  
24           after January 1, 2005 but less than a 14-year  
25           period beginning on or after January 1, 2005, 40%  
26           of the gain recognized on the sale of the eligible  
27           timberlands;

28           (e) For eligible timberlands held by the taxpayer  
29           for at least a 14-year period beginning on or  
30           after January 1, 2005 but less than a 15-year  
31           period beginning on or after January 1, 2005, 50%  
32           of the gain recognized on the sale of the eligible  
33           timberlands;

34           (f) For eligible timberlands held by the taxpayer  
35           for at least a 15-year period beginning on or  
36           after January 1, 2005 but less than a 16-year  
37           period beginning on or after January 1, 2005, 60%  
38           of the gain recognized on the sale of the eligible  
39           timberlands;

40           (g) For eligible timberlands held by the taxpayer  
41           for at least a 16-year period beginning on or  
42           after January 1, 2005 but less than a 17-year  
43           period beginning on or after January 1, 2005, 70%  
44           of the gain recognized on the sale of the eligible  
45           timberlands;

2                   of the gain recognized on the sale of the eligible  
3                   timberlands;

4                   (h) For eligible timberlands held by the taxpayer  
5                   for at least a 17-year period beginning on or  
6                   after January 1, 2005 but less than an 18-year  
7                   period beginning on or after January 1, 2005, 80%  
8                   of the gain recognized on the sale of the eligible  
9                   timberlands;

10                   (i) For eligible timberlands held by the taxpayer  
11                   for at least an 18-year period beginning on or  
12                   after January 1, 2005 but less than a 19-year  
13                   period beginning on or after January 1, 2005, 90%  
14                   of the gain recognized on the sale of the eligible  
15                   timberlands; or

16                   (j) For eligible timberlands held by the taxpayer  
17                   for at least a 19-year period beginning on or  
18                   after January 1, 2005, 100% of the gain recognized  
19                   on the sale of the eligible timberlands.

20                   In the case of timberlands owned by an entity that is  
21                   treated as a pass-through entity for income tax purposes,  
22                   the land must be treated as eligible timberland if ownership  
23                   and use of the land by the pass-through entity satisfies the  
24                   requirements of this paragraph. If the owner of the  
25                   eligible timberlands is an S corporation, the taxpayer must  
26                   subtract the owner's pro rata share of the gain. If the  
27                   owner of the timberlands is a partnership or limited  
28                   liability company taxed as a partnership, the taxpayer must  
29                   subtract the taxpayer's distributive share of the gain,  
30                   subject to the percentage limitations provided in this  
31                   paragraph.

32                   This modification may not reduce Maine taxable income to  
33                   less than zero. To the extent this modification results in  
34                   Maine net income that is less than zero for the taxable  
35                   year, the excess negative modification amount may be carried  
36                   forward and applied as a subtraction modification for up to  
37                   10 taxable years. The entire amount of the excess negative  
38                   modification must be carried to the earliest of the taxable  
39                   years to which, by reason of this subsection, the negative  
40                   modification may be carried and then to each of the other  
41                   taxable years to the extent the unused negative modification  
42                   is not used for a prior taxable year. Earlier carry-forward  
43                   modifications must be used before newer modifications  
44                   generated in later years.

2           **Sec. 4. 36 MRSA §5200-A, sub-§2, ¶L**, as amended by PL 2003, c.  
20, Pt. EE, §3, is further amended to read:

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

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

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

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

22           **Sec. 5. 36 MRSA §5200-A, sub-§2, ¶M**, as repealed and replaced  
24 by PL 2003, c. 479, §6, is amended to read:

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

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

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

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

6 **Sec. 6. 36 MRSA §5200-A, sub-§2, ¶P** is enacted to read:

8  
10 P. For income tax years beginning on or after January 1,  
2015, the gain attributable to the sale of eligible  
timberlands as calculated pursuant to this paragraph.

12  
14 (1) As used in this paragraph, unless the context  
otherwise indicates, the following terms have the  
following meanings.

16  
18 (a) "Commercial harvesting" or "commercially  
harvested" means the harvesting of forest products  
that have commercial value.

20  
22 (b) "Eligible timberlands" means land of at least  
10 acres used primarily for the growth of trees to  
be commercially harvested. Land that would  
otherwise be included within this definition may  
not be excluded because of:

26  
28 (i) Use of the land for multiple public  
recreation activities;

30  
32 (ii) Statutory or governmental restrictions  
that prevent commercial harvesting of trees  
or require a primary use of the land other  
than commercial harvesting;

34  
36 (iii) Deed restrictions, restrictive  
covenants or organizational charters that  
prevent commercial harvesting of trees or  
require a primary use of land other than  
commercial harvesting and that were effective  
prior to January 1, 1982; or

40  
42 (iv) Past or present multiple use for  
mineral exploration.

44  
46 (c) "Forest products that have commercial value"  
means logs, pulpwood, veneer, bolt wood, wood  
chips, stud wood, poles, pilings, biomass, fuel  
wood, Christmas trees, maple syrup, nursery  
products used for ornamental purposes, wreaths,  
50 bough material or cones or other seed products.

2           (2) The taxable income of the taxpayer under the laws  
4           of the United States must be decreased by:

6           (a) For eligible timberlands held by the taxpayer  
8           for at least a 10-year period beginning on or  
10           after January 1, 2005 but less than an 11-year  
12           period beginning on or after January 1, 2005, 10%  
14           of the gain recognized on the sale of the eligible  
16           timberlands;

18           (b) For eligible timberlands held by the taxpayer  
20           for at least an 11-year period beginning on or  
22           after January 1, 2005 but less than a 12-year  
24           period beginning on or after January 1, 2005, 20%  
26           of the gain recognized on the sale of the eligible  
28           timberlands;

30           (c) For eligible timberlands held by the taxpayer  
32           for at least a 12-year period beginning on or  
34           after January 1, 2005 but less than a 13-year  
36           period beginning on or after January 1, 2005, 30%  
38           of the gain recognized on the sale of the eligible  
40           timberlands;

42           (d) For eligible timberlands held by the taxpayer  
44           for at least a 13-year period beginning on or  
46           after January 1, 2005 but less than a 14-year  
48           period beginning on or after January 1, 2005, 40%  
50           of the gain recognized on the sale of the eligible  
          timberlands;

(e) For eligible timberlands held by the taxpayer  
          for at least a 14-year period beginning on or  
          after January 1, 2005 but less than a 15-year  
          period beginning on or after January 1, 2005, 50%  
          of the gain recognized on the sale of the eligible  
          timberlands;

(f) For eligible timberlands held by the taxpayer  
          for at least a 15-year period beginning on or  
          after January 1, 2005 but less than a 16-year  
          period beginning on or after January 1, 2005, 60%  
          of the gain recognized on the sale of the eligible  
          timberlands;

(g) For eligible timberlands held by the taxpayer  
          for at least a 16-year period beginning on or  
          after January 1, 2005 but less than a 17-year  
          period beginning on or after January 1, 2005, 70%

2 of the gain recognized on the sale of the eligible  
3 timberlands;

4 (h) For eligible timberlands held by the taxpayer  
5 for at least a 17-year period beginning on or  
6 after January 1, 2005 but less than an 18-year  
7 period beginning on or after January 1, 2005, 80%  
8 of the gain recognized on the sale of the eligible  
9 timberlands;

10 (i) For eligible timberlands held by the taxpayer  
11 for at least an 18-year period beginning on or  
12 after January 1, 2005 but less than a 19-year  
13 period beginning on or after January 1, 2005, 90%  
14 of the gain recognized on the sale of the eligible  
15 timberlands; or

16 (j) For eligible timberlands held by the taxpayer  
17 for at least a 19-year period beginning on or  
18 after January 1, 2005, 100% of the gain recognized  
19 on the sale of the eligible timberlands.

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22 In the case of timberlands owned by an entity that is  
23 treated as a pass-through entity for income tax purposes,  
24 the land must be treated as eligible timberland if ownership  
25 and use of the land by the pass-through entity satisfies the  
26 requirements of this paragraph. If the owner of the  
27 eligible timberlands is an S corporation, the taxpayer must  
28 subtract the owner's pro rata share of the gain. If the  
29 owner of the timberlands is a partnership or limited  
30 liability company taxed as a partnership, the taxpayer must  
31 subtract the taxpayer's distributive share of the gain,  
32 subject to the percentage limitations provided in this  
33 paragraph.

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35 This modification may not reduce Maine taxable income to  
36 less than zero. To the extent this modification results in  
37 Maine net income that is less than zero for the taxable  
38 year, the excess negative modification amount may be carried  
39 forward and applied as a subtraction modification for up to  
40 10 taxable years. The entire amount of the excess negative  
41 modification must be carried to the earliest of the taxable  
42 years to which, by reason of this subsection, the negative  
43 modification may be carried and then to each of the other  
44 taxable years to the extent the unused negative modification  
45 is not used for a prior taxable year. Earlier carry-forward  
46 modifications must be used before newer modifications  
47 generated in later years.

50

## SUMMARY

2  
4 This bill provides an income tax deduction to individuals  
6 and corporations for the taxable gain on the sale of eligible  
8 timberlands held for at least a 10-year period beginning on or  
10 after January 1, 2005. The amount of the deduction is increased  
in 10% increments depending on how many years beyond 10 the  
eligible timberlands are held prior to their sale. If the  
timberlands are held for at least 19 years after January 1, 2005,  
the tax deduction is 100% of the gain on the sale of the eligible  
timberlands.