

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 1462

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H.P. 1024

House of Representatives, March 23, 2005

### An Act To Make Minor Substantive Changes to the Tax Laws

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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 WOODBURY of Yarmouth.  
Cosponsored by Senator PERRY of Penobscot.

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

2  
4       **Sec. 1. 4 MRSA §807-A, 2nd ¶**, as amended by PL 1987, c. 497,  
§1 and PL 1997, c. 526, §14, is further amended to read:

6       Upon promulgation of and in accordance with rules adopted by  
8 the Supreme Judicial Court, employees of the Bureau of Revenue  
10 Services may serve civil process and represent the bureau in  
12 District Court in disclosure proceedings pursuant to Title 14,  
14 chapter 502, ancillary to the collection of taxes for which  
warrants have been issued pursuant to Title 36, and may represent  
the State Tax Assessor in arraignment proceedings in District  
Court in cases in which a criminal complaint has been filed  
alleging violation of any provision of Title 36, ~~section 2113,~~  
~~3234 or 5332.~~

16       **Sec. 2. 36 MRSA §111, sub-§5**, as amended by PL 1997, c. 668,  
18 §8, is further amended to read:

20       **5. Tax.** "Tax" means the total amount required to be paid,  
22 withheld and paid over, or collected and paid over with respect  
to estimated or actual tax liability under this Title and any  
24 amount assessed by the State Tax Assessor pursuant to this Title,  
including any interest or ~~civil--penalty--relating--thereto~~  
penalties provided by law. For purposes of sections 171, 175-A,  
26 176-A and 186, "tax" also means any fee, fine, penalty or other  
obligation owed to the State provided for by law if this  
28 obligation is subject to collection by the assessor pursuant to  
an agreement entered into by the bureau and another agency of the  
30 State.

32       **Sec. 3. 36 MRSA §187-B, sub-§5-B** is enacted to read:

34       **5-B. Electronic data submission.** Any person required by the  
36 State Tax Assessor to file returns by electronic data submission  
that fails to file electronically is liable for a penalty of 5%  
38 of the tax due or \$50, whichever is greater. For purposes of  
this subsection, a person fails to file electronically when:

40       A. Two or more required returns in any consecutive 6-month  
42 period either are not filed or are filed by the person by  
means other than electronic data submission and the person  
44 has been notified in writing by the State Tax Assessor of  
that person's noncompliance and of the fact that the penalty  
authorized by this subsection may be imposed; or

46       B. The person files 2 or more required electronic returns in  
48 any consecutive 6-month period that do not comply with the  
specifications set forth in rules adopted by the State Tax  
50 Assessor pursuant to section 193.

2           **Sec. 4. 36 MRSA §191, sub-§2, ¶R**, as corrected by RR 2003, c.  
2, §114, is amended to read:

4  
6           R. The disclosure to the Department of Health and Human  
Services of information relating to the administration and  
collection of the ~~tax~~ taxes imposed by chapter 358, chapter  
8           373 ~~and~~, chapter 375 ~~and~~ chapter 377;

10           **Sec. 5. 36 MRSA §191, sub-§2, ¶BB**, as amended by PL 2003, c.  
668, §9 and affected by §12 and amended by c. 689, Pt. B, §6, is  
12 further amended to read:

14           BB. The disclosure to an authorized representative of the  
Department of Health and Human Services, Office of ~~Head~~  
16           ~~Start~~ and Child Care and Head Start of taxpayer information  
directly relating to the certification of investments  
18           eligible for or the eligibility of a taxpayer for the  
quality child care investment credit provided by section  
20           5219-Q; and

22           **Sec. 6. 36 MRSA §191, sub-§2, ¶CC**, as enacted by PL 2003, c.  
668, §10 and affected by §12, is amended to read:

24           CC. The disclosure to an authorized representative of the  
Department of Professional and Financial Regulation of  
26           information necessary for the administration of Title 10,  
chapter 222.;

30           **Sec. 7. 36 MRSA §191, sub-§2, ¶¶DD to GG** are enacted to read:

32           DD. The delivery of a certified copy of any return, report  
or other information provided or filed pursuant to this  
34           Title by a partnership, corporation, trust or estate or any  
report of any examination of a return filed by a  
36           partnership, corporation, trust or estate to any person:

38           (1) Who signed the return;

40           (2) Who is the personal representative or executor of  
the estate filing the return;

42           (3) Who was a member of the partnership filing the  
44           return during any part of the period covered by the  
return;

46           (4) Who is a trustee of the trust filing the return;  
48

2           (5) Who was a shareholder during any part of the  
period covered by the return filed by an S corporation;

4           (6) Who is an officer, or a bona fide shareholder of  
record owning 1% or more of the outstanding stock, of  
6           the corporation filing the return;

8           (7) Who is the person authorized to act for the  
corporation if the corporation has been dissolved; or  
10

12           (8) Who is the duly authorized representative of any  
of the persons described in subparagraphs (1) to (7).

14           The exception under this paragraph does not include the  
disclosure of confidential information of a particular  
16           partner, shareholder, beneficiary or trustee or other person  
receiving income from one of the entities described in  
18           subparagraphs (1) to (8) unless otherwise authorized;

20           EE. The disclosure by the State Tax Assessor of the fact  
that a person has or has not been issued a provisional  
22           resale certificate pursuant to section 1754-B, subsection  
2-B or a resale certificate pursuant to section 1754-B,  
24           subsection 2-C;

26           FF. The disclosure to the Department of the Secretary of  
State, Bureau of Motor Vehicles of whether the person  
28           seeking registration of a vehicle has paid the tax imposed  
by Part 3 with respect to that vehicle; and  
30

32           GG. The disclosure to the Department of Inland Fisheries and  
Wildlife, Bureau of Administrative Services of whether the  
34           person seeking registration of a snowmobile, all-terrain  
vehicle or watercraft has paid the tax imposed by Part 3  
36           with respect to that snowmobile, all-terrain vehicle or  
watercraft.

38           Sec. 8. 36 MRSA §193, as amended by PL 1999, c. 708, §18, is  
repealed and the following enacted in its place:  
40

42           **§193. Returns; declaration covering perjury; submission of**  
**returns and funds by electronic means**

44           **1. Declaration required.** Any return, report or other  
document required to be filed pursuant to this Title must contain  
46           a declaration, in a form prescribed by the State Tax Assessor,  
that the statements contained in the return, report or other  
48           document are true and are made under the penalties of perjury.  
When a tax return is filed electronically by a taxpayer or with  
50           the taxpayer's permission, the filing of that return constitutes

2 a sworn statement by the taxpayer, made under the penalties of  
3 perjury, that the tax liability shown on the return is correct.

4 2. Electronic filing. The State Tax Assessor may allow or,  
5 as provided in this subsection, require the filing of a return or  
6 document by electronic data submission or by telephone.

8 A. In the case of an employer that submits returns in  
9 accordance with section 5253 with respect to 100 or more  
10 employees, whether the returns are submitted directly by the  
11 employer or by a 3rd party on behalf of the employer, the  
12 assessor may require that the returns be filed by electronic  
13 data submission.

14 B. In the case of a payroll processor as defined in Title  
15 10, chapter 222 that submits returns pursuant to section  
16 5253 or Title 26, chapter 13, subchapter 7 for 100 or more  
17 employers, the assessor may require that the returns be  
18 filed by electronic data submission.

20 3. Payment by electronic funds transfer. The State Tax  
21 Assessor may allow or, as provided in this subsection, require  
22 the payment of a tax or the refund of a tax by electronic funds  
23 transfer. An electronic funds transfer allowed or required by the  
24 assessor pursuant to this subsection is considered a return. For  
25 the purposes of this subsection, "tax" includes unemployment  
26 insurance contributions required to be paid to the State pursuant  
27 to Title 26.

30 A. In the case of a person that is liable for \$200,000 or  
31 more per year pursuant to section 5253 or for \$400,000 or  
32 more per year in payments of any other single tax type, the  
33 assessor may require payment or refund of that tax by  
34 electronic funds transfer.

36 B. In the case of a payroll processor as defined in Title  
37 10, chapter 222, the assessor may require payment or refund  
38 of taxes pursuant to section 5253 and unemployment insurance  
39 contributions pursuant to Title 26, chapter 13, subchapter 7  
40 by electronic funds transfer.

42 4. Adoption of rules. The State Tax Assessor may adopt rules  
43 to establish procedures necessary to implement the provisions of  
44 this section and shall adopt rules in the event that payment of  
45 taxes by electronic funds transfer is mandated. Rules adopted  
46 pursuant to this subsection are routine technical rules for the  
47 purposes of Title 5, chapter 375, subchapter 2-A.

48 Sec. 9. 36 MRSA §208-A, sub-§1, as enacted by PL 1997, c. 688,  
49 §1, is amended to read:

2           **1. Request for adjustment.** A municipality that has  
4 experienced a sudden and severe disruption in its municipal  
6 valuation may request an adjustment to the equalized valuation  
8 determined by the State Tax Assessor under section 208. A  
10 municipality requesting an adjustment under this section must  
12 file a petition, with supporting documentation, with the State  
14 Tax Assessor ~~by the August 1st preceding the October 1st when~~  
16 ~~municipalities are notified~~ within 45 days following receipt of  
18 the annual notice of the proposed valuations of municipalities  
20 within each county as required under section 208.

22           **Sec. 10. 36 MRSA §1752, sub-§9-B,** as amended by PL 1997, c.  
24 557, Pt. D, §1 and affected by §4 and Pt. G, §1, is further  
26 amended to read:

28           **9-B. Production.** "Production" means an operation or  
30 integrated series of operations engaged in as a business or  
32 segment of a business that transforms or converts personal  
34 property by physical, chemical or other means into a different  
36 form, composition or character from that in which it originally  
38 existed. "Production" includes film production.

40           "Production" includes manufacturing, processing, assembling and  
42 fabricating operations that meet the definitional requisites,  
44 including biological processes that are part of an integrated  
46 process of manufacturing organisms or microorganic materials  
48 through the application of biotechnology.

50           "Production" does not include biological processes except as  
52 otherwise provided by this subsection, wood harvesting  
54 operations, the severance of sand, gravel, oil, gas or other  
56 natural resources produced or severed from the soil or water, or  
58 activities such as cooking or preparing drinks, meals, food or  
60 food products by a retailer for retail sale. ~~The foregoing are~~  
62 ~~examples of activities that are not included within the term~~  
64 ~~"production."~~

66           **Sec. 11. 36 MRSA §1752, sub-§11,** as amended by PL 2003, c.  
68 588, §3, is further amended to read:

70           **11. Retail sale.** "Retail sale" means any sale of tangible  
72 personal property or a taxable service in the ordinary course of  
74 business ~~for any purpose other than for resale, except resale as~~  
76 ~~a casual sale, in the form of tangible personal property.~~  
78 "Retail sale" ~~also means any sale of a taxable service in the~~  
80 ~~ordinary course of business for any purpose other than for~~  
82 ~~resale, except resale as a casual sale.~~

84           A. "Retail sale" includes:

2 (1) Conditional sales, installment lease sales and any  
4 other transfer of tangible personal property when the  
6 title is retained as security for the payment of the  
purchase price and is intended to be transferred later;  
and

8 (2) Sale of products for internal human consumption to  
10 a person for resale through coin-operated vending  
12 machines when sold to a person more than 50% of whose  
14 gross receipts from the retail sale of tangible  
personal property are derived from sales through  
vending machines. The tax must be paid by the retailer  
to the State.

16 B. "Retail sale" does not include:

18 (1) Any casual sale;

20 (2) Any sale by a personal representative in the  
22 settlement of an estate, unless the sale is made  
through a retailer, or unless the sale is made in the  
continuation or operation of a business;

24 (3) The sale, to a person engaged in the business of  
26 renting automobiles, of automobiles, integral parts of  
automobiles or accessories to automobiles, for rental  
28 or for use in an automobile rented on a short-term  
basis;

30 (4) The sale, to a person engaged in the business of  
32 renting audio or video media and audio or video  
equipment, of audio or video media or audio or video  
34 equipment for rental;

36 (5) The sale, to a person engaged in the business of  
38 renting or leasing automobiles, of automobiles for  
rental or lease for one year or more;

40 (6) The sale, to a person engaged in the business of  
42 providing cable television services, of cable converter  
boxes and remote-control units for rental or lease; or

44 (7) The sale, to a person engaged in the business of  
46 renting furniture, of furniture for rental;

48 (8) The sale, in the form of tangible personal  
property, to a retailer that has been issued a resale  
certificate pursuant to section 1754-B, subsection 2-B



2                   or 2-C, of tangible personal property for resale,  
                  except resale as a casual sale;

4                   (9) The sale, in the form of tangible personal  
                  property, to a retailer that has been issued a resale  
6                   certificate pursuant to section 1754-B, subsection 2-B  
                  or 2-C, of a taxable service for resale;

8                   (10) The sale, in the form of tangible personal  
10                  property to a retailer that is not required to register  
                  by section 1754-B, of tangible personal property for  
12                  resale outside the State, except resale as a casual  
                  sale; or

14                  (11) The sale, to a retailer that is not required to  
16                  register by section 1754-B, of a taxable service for  
                  resale outside the State, except resale as a casual  
18                  sale.

20                  **Sec. 12. 36 MRSA §1752, sub-§17-B,** as enacted by PL 2003, c.  
673, Pt. V, §19 and affected by §29, is amended to read:

22                   **17-B. Taxable service.** "Taxable service" means the rental  
24 of living quarters in a hotel, rooming house, or tourist or  
trailer camp; the transmission and distribution of electricity;  
26 the distribution of natural gas; the rental or lease of an  
automobile; and the sale of prepaid calling service.

28                  **Sec. 13. 36 MRSA §1754-B, sub-§§2-B and 2-C,** as enacted by PL  
30 2003, c. 673, Pt. AAA, §2, are amended to read:

32                   **2-B. Provisional resale certificates; new accounts.** The  
assessor shall issue a provisional resale certificate to each  
34 applicant for initial registration that states on its application  
that it expects to make annual gross sales of \$10,000 or more. A  
36 provisional resale certificate ~~issued between January 1st and~~  
~~September 30th~~ is effective ~~for the duration of the calendar year~~  
38 ~~in which it is issued.~~ A until the end of the next calendar year  
in which the status of retailers registered under this section is  
40 reviewed pursuant to subsection 2-C, except that a provisional  
resale certificate issued between October 1st and December 31st  
42 immediately preceding the commencement of a 3-year period  
pursuant to subsection 2-C is effective until the end of the next  
44 that succeeding calendar-year 3-year period. Each certificate  
must contain the name and address of the retailer, the expiration  
46 date of the certificate and the certificate number. If a vendor  
has a true copy of a retailer's resale certificate on file, that  
48 retailer need not present the certificate for each subsequent  
transaction with that vendor during the ~~calendar-year~~ period for  
50 which it is valid.

2           **2-C. Resale certificates; contents; presentation to**  
3 **vendor.** The assessor shall annually review the status of each  
4 retailer registered under this section, ~~On or before December~~  
5 ~~31st 31, 2005, and on or before December 31st~~ of each every 3rd  
6 year, ~~the thereafter.~~ The assessor shall issue to each  
7 registered retailer with gross sales of \$10,000 or more during  
8 the 12 months preceding the assessor's review ~~an annual a~~ resale  
9 certificate effective for the next ~~succeeding calendar year~~ 3  
10 years. Each certificate must contain the name and address of the  
11 retailer, the expiration date of the certificate and the  
12 certificate number. If a vendor has a true copy of a retailer's  
13 resale certificate on file, that retailer need not present the  
14 certificate for each subsequent transaction with that vendor  
15 during the ~~calendar year~~ period for which it is valid.

16           **Sec. 14. 36 MRSA §1811-B**, as enacted by PL 2003, c. 673, Pt.  
17 AAA, §3, is amended to read:

18  
19           **§1811-B. Credit for tax paid on purchases for resale**

20  
21           A retailer registered under section 1754-B may claim a  
22 credit for sales tax imposed by ~~chapters 211 to 225~~ this Part if  
23 the retailer has paid the sales tax on ~~an item that it~~  
24 ~~subsequently resells~~ tangible personal property purchased for  
25 resale at retail sale. The credit may be claimed only on the  
26 return ~~on which the sale of the item is reported~~ that corresponds  
27 to the month in which the tax was paid. The credit ~~must be~~  
28 ~~claimed on a return filed within 5 years from the date on which~~  
29 ~~the retailer purchased the item and~~ may not be claimed if the  
30 item was ~~used~~ has been withdrawn from inventory by the retailer  
31 for the retailer's own use prior to its sale.

32  
33           **Sec. 15. 36 MRSA §2908**, as repealed and replaced by PL 1987,  
34 c. 402, Pt. A, §183, is repealed and the following enacted in its  
35 place:

36  
37           **§2908. Refund of tax in certain cases; time limit**

38  
39           A person who purchases and uses internal combustion engine  
40 fuel for any commercial use other than in the operation of a  
41 registered motor vehicle on the highways of this State or, except  
42 as provided in section 2910, in the operation of an aircraft and  
43 who has paid the tax imposed by this chapter on that fuel is  
44 entitled to reimbursement in the amount of the tax paid, less 1¢  
45 per gallon, upon presenting to the State Tax Assessor a sworn  
46 statement accompanied by the original invoices or other evidence  
47 as the assessor may require. The statement must show the total  
48 amount of internal combustion engine fuel so purchased and used  
49 by that person for a commercial use other than in the operation  
50

2 of registered motor vehicles on the highways of this State or in  
3 the operation of aircraft.

4 A refund application on a form prescribed by the State Tax  
5 Assessor must be filed to claim a refund pursuant to this  
6 section. Interest must be paid at the rate determined pursuant to  
7 section 186, calculated from the date of receipt of the monthly  
8 claim, for all proper claims not paid within 30 days of receipt.  
9 Applications for refunds must be filed with the assessor within  
10 12 months from the date of purchase.

11 All fuel that qualifies for a refund under this section is  
12 subject to the use tax imposed by chapter 215.

13  
14 **Sec. 16. 36 MRSA §2909, 2nd ¶**, as repealed and replaced by PL  
15 2003, c. 390, §14, is amended to read:

16  
17 Applications for refunds must be filed with the State Tax  
18 Assessor, on a form prescribed by the assessor and accompanied by  
19 the original invoices showing those purchases, within 9 12 months  
20 from the date of purchase. A refund may not be issued under this  
21 section unless the claimant's commutation fare revenue derived  
22 during the calendar quarter for which the refund is claimed is at  
23 least 60% of the claimant's total passenger fare revenue derived  
24 during that calendar quarter.

25  
26 **Sec. 17. 36 MRSA §3215, last ¶**, as repealed and replaced by PL  
27 2003, c. 390, §16, is amended to read:

28  
29 Applications for refunds must be filed with the State Tax  
30 Assessor, on a form prescribed by the assessor and accompanied by  
31 the original invoices showing those purchases, within 9 12 months  
32 from the date of purchase. A refund may not be issued under this  
33 section unless the claimant's commutation fare revenue derived  
34 during the calendar quarter for which the refund is claimed is at  
35 least 60% of the claimant's total passenger fare revenue derived  
36 during that calendar quarter.

37  
38 **Sec. 18. 36 MRSA §3218, first and 2nd ¶¶**, as repealed and  
39 replaced by PL 2003, c. 390, §17, are amended to read:

40  
41 A person who purchases and uses special fuel for any use  
42 other than operation of a registered motor vehicle on the  
43 highways of this State, and who has paid the tax imposed by this  
44 chapter on that fuel, is entitled to reimbursement in the amount  
45 of the tax paid, less 1¢ per gallon, upon presenting to the State  
46 Tax Assessor a sworn statement accompanied by the original  
47 invoices or other evidence as the assessor may require. The  
48 statement must show the total amount of special fuel so purchased  
49 and used by that person other than in the operation of registered  
50

2 motor vehicles on the highways of this State and or in the  
3 operation of aircraft. ~~Applications for refunds must be filed~~  
4 ~~with the assessor within 15 months from the date of purchase.~~

5 A monthly refund application on a form prescribed by the  
6 assessor may must be filed ~~at the close of any month~~ to claim a  
7 refund pursuant to this section. Interest must be paid at the  
8 rate determined pursuant to section 186, calculated from the date  
9 of receipt of the monthly claim, for all proper claims not paid  
10 within 30 days of receipt. ~~Nothing in this paragraph may be~~  
11 ~~construed to relieve the applicant from filing quarterly reports~~  
12 ~~as prescribed in section 3209. Applications for refunds must be~~  
13 ~~filed with the assessor within 12 months from the date of~~  
14 ~~purchase.~~

15 **Sec. 19. 36 MRSA §5142, sub-§1**, as amended by PL 2003, c. 391,  
16 §6, is further amended to read:

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

20 **A.** The net amount of items of income, gain, loss, and  
21 deduction entering into the nonresident individual's federal  
22 adjusted gross income that are derived from or connected  
23 with sources in this State including (i) the individual's  
24 distributive share of partnership or limited liability  
25 company income and deductions determined under section 5192,  
26 (ii) the individual's share of estate or trust income and  
27 deductions determined under section 5176, and (iii) the  
28 individual's pro rata share of the income of an S  
29 corporation derived from or connected with sources in this  
30 State; and

31 **B.** The portion of the modifications described in section  
32 5122, subsections 1 and 2 that relates to income derived  
33 from or connected with sources in this State, including any  
34 modifications attributable to the nonresident individual as  
35 a partner of a partnership, shareholder of an S corporation,  
36 member of a limited liability company or beneficiary of an  
37 estate or trust; ~~and.~~

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

42 **Sec. 20. 36 MRSA §5142, sub-§2**, as enacted by P&SL 1969, c.  
43 154, Sec. F, is amended to read:

2           **2. Attribution.** Items of income, gain, loss, and deduction  
2 derived from or connected with sources within this State are  
4 those items attributable to:

6           A. The ownership or disposition of any interest in real or  
6 tangible personal property in this State; and

8           B. A business, trade, profession or occupation carried on  
10 in this State; and

12           C. Proceeds from any gambling activity conducted in this  
12 State or lottery tickets purchased in this State, including  
14 payments received from a 3rd party for the transfer of the  
14 rights to future proceeds related to any such gambling  
16 activity or lottery tickets.

18           **Sec. 21. 36 MRSA §5142, sub-§8,** as repealed and replaced by PL  
18 2003, c. 673, Pt. E, §1 and affected by §3, is repealed.

20           **Sec. 22. 36 MRSA §5142, sub-§8-A** is enacted to read:

22           **8-A. Minimum taxability threshold.** Minimum taxability  
24 thresholds for nonresidents are as follows.

26           A. Compensation received during any taxable year after 2003  
26 for personal services performed in the State prior to  
28 January 1, 2004 is Maine-source income subject to taxation  
30 under this Part if the nonresident taxpayer is present in  
30 the State performing personal services for more than 10 days  
32 during that taxable year.

34           B. Compensation received during any taxable year after 2003  
34 for personal services performed in this State after December  
36 31, 2003 is Maine-source income subject to taxation under  
38 this Part if the nonresident taxpayer was present in the  
38 State performing personal services for more than 10 days  
40 during the year in which the personal services were  
42 performed.

40           **Sec. 23. 36 MRSA §5220, sub-§2,** as amended by PL 2003, c. 673,  
42 Pt. E, §2 and affected by §3, is further amended to read:

44           **2. Nonresident individuals.** Every nonresident individual  
44 who, pursuant to this Part, has a Maine individual income tax  
46 liability for the taxable year. An individual whose only  
46 Maine-source income is compensation for personal services  
48 performed in Maine that is excluded from Maine adjusted gross  
50 income by the threshold contained in section 5142, subsection 8  
50 8-A is not subject to taxation under this Part and need not file  
50 a return;

2           **Sec. 24. 36 MRSA §5250-B, sub-§1, ¶C**, as enacted by PL 2003,  
c. 20, Pt. AA, §1 and affected by §6, is amended to read:

4  
6           C. "Pass-through entity" means a corporation that for the  
applicable tax year is treated as an S corporation under the  
Code, and a general partnership, limited partnership,  
8           limited liability partnership, ~~trust~~, limited liability  
company or similar entity that for the applicable tax year  
10           is not taxed as a C corporation for federal tax purposes.  
12           For purposes of this section, "pass-through entity" does not  
include a financial institution subject to tax under chapter  
819.

14  
16           **Sec. 25. 36 MRSA §5276, sub-§1**, as amended by PL 1991, c. 546,  
§36, is further amended to read:

18           **1. General rule.** The State Tax Assessor, within the  
applicable period of limitations, may credit an overpayment of  
20           income tax, including an overpayment reported on a joint return,  
and interest on such the overpayment against any liability  
22           arising from a redetermination pursuant to section 6211 or any  
liability in respect of any tax imposed under this Title en owed  
24           by the taxpayer, or by the taxpayer's spouse in the case of a  
joint return, --who-made-the-overpayment,--and-the. The balance,  
26           after any setoff pursuant to section 5276-A, must be refunded by  
the Treasurer of State.

28           **Sec. 26. 36 MRSA §5276, sub-§6** is enacted to read:

30           **6. Overpayment by pass-through entity.** If there has been  
32           an overpayment of tax required to be withheld under section  
5250-B, refund must be made to the pass-through entity only to  
34           the extent that the amount of the overpayment was not deducted  
and withheld by the pass-through entity.

36           **Sec. 27. 36 MRSA §6211**, as enacted by PL 1987, c. 516, §§3  
38           and 6, is amended to read:

40           **§6211. Audit of claim**

42           If, on the audit of any claim filed under this chapter, the  
State Tax Assessor determines the amount to have been incorrectly  
44           determined, he the assessor shall redetermine the claim and shall  
notify the claimant of the redetermination and his the reasons  
46           for it. The redetermination shall-be-final-unless-appealed-to-the  
State-Tax-Assessor-within-30-days-of-notice is reviewable in  
48           accordance with section 151. If the claim has been paid, the  
amount paid in excess of that legally due is subject to interest  
50           at the rate determined pursuant to section 186. The assessor may

2 credit a benefit payable to a claimant under this chapter against  
3 a liability of that claimant pursuant to this section.

4 **Sec. 28. 36 MRSA §6212**, as amended by PL 1989, c. 534, Pt. A,  
5 §9, is repealed and the following enacted in its place:

6 **§6212. Denial of claim**

7  
8  
9  
10 **1. Fraudulent claim.** If the State Tax Assessor determines  
11 that a claim under this chapter is excessive and was filed with  
12 fraudulent intent, the claim must be disallowed in full. If the  
13 claim has been paid, the amount paid may be recovered by  
14 assessment, collection and enforcement in the manner provided in  
15 chapter 7. A person who, with fraudulent intent, files or  
16 prepares an excessive claim, assists in the preparation or filing  
17 of an excessive claim or supplies information in support of an  
18 excessive claim commits a Class E crime.

19  
20 **2. Negligent claim.** If the State Tax Assessor determines  
21 that a claim under this chapter is excessive and was negligently  
22 prepared, the amount claimed in excess of that legally due plus  
23 10% of the corrected claim must be disallowed. If the claim has  
24 been paid, the amount disallowed may be recovered by assessment,  
25 collection and enforcement in the manner provided in chapter 7.

26 **3. Unpaid liability.** A person who has an unpaid liability  
27 arising from this section and the spouse of that person are  
28 disqualified from receiving benefits under this chapter.

29  
30 **Sec. 29. Application.** Those sections of this Act that enact  
31 the Maine Revised Statutes, Title 36, section 187-B, subsection  
32 5-B and section 193, subsection 2, paragraphs A and B apply to  
33 returns filed for periods beginning on or after January 1, 2006.  
34 That section of this Act that amends Title 36, section 1811-B  
35 applies to sales occurring on or after September 1, 2005. Those  
36 sections of this Act that amend Title 36, section 5142,  
37 subsections 1 and 2 and section 5250-B, subsection 1, paragraph C  
38 apply to tax years beginning on or after January 1, 2005. Those  
39 sections of this Act that repeal the Maine Revised Statutes,  
40 Title 36, section 5142, subsection 8 and enact Title 36, section  
41 5142, subsection 8-A apply to tax years beginning on or after  
42 January 1, 2004.

43  
44  
45 **SUMMARY**

46 This bill makes the following changes to the laws governing  
47 taxation.  
48

2 It authorizes employees of the Department of Administrative  
and Financial Services, Bureau of Revenue Services to represent  
4 the bureau in District Court at arraignments for violation of any  
criminal provision of the Maine Revised Statutes, Title 36.

6 It amends the definition of "tax" to include any amount  
assessed by the State Tax Assessor under Title 36.

8 It establishes a civil penalty for persons who are required  
10 to file returns electronically and who fail to do so.

12 It permits disclosure of confidential tax information to the  
Department of Health and Human Services for purposes related to  
14 the administration and collection of the new hospital tax and the  
service provider tax.

16 It corrects the name of the state agency to which  
18 information pertaining to the quality child care investment  
credit may lawfully be disclosed.

20 It authorizes the Bureau of Revenue Services to provide  
22 copies of pass-through entity tax returns to members, officers  
and certain other related parties of the entity.

24 It permits the Bureau of Revenue Services to disclose  
26 whether a person has been issued a resale certificate under the  
sales and use tax law.

28 It authorizes the Bureau of Revenue Services to disclose to  
30 the Department of the Secretary of State, Bureau of Motor  
Vehicles or the Department of Inland Fisheries and Wildlife,  
32 Bureau of Administrative Services whether use tax has been paid  
on a vehicle or recreational vehicle.

34 It clarifies the State Tax Assessor's authority to require  
36 electronic filing of payroll taxes by payroll processors and  
certain large employers.

38 It extends the period within which a municipality that has  
40 experienced a sudden and severe disruption in its municipal  
valuation may request an adjustment to its equalized valuation by  
42 about 105 days. This will give municipal officials requesting an  
adjustment due to sudden and severe disruption the same filing  
44 period as that provided under current law for filing an appeal on  
the equalized valuation or minimum assessing standards.

46 It clarifies that film production qualifies as production  
48 for purposes of the sales and use tax law.



2 It amends the definition of "retail sale" to provide that  
sales for resale are not retail sales when made to the holder of  
4 a valid resale certificate or to an out-of-state retailer that is  
not required to register as a seller in the State.

6 It makes the distribution of natural gas a taxable service  
under the sales and use tax law. This will ensure consistency in  
8 the taxation of charges for distribution of natural gas  
regardless of whether they are bundled with the sale of the gas.

10 It extends the period for which a resale certificate is  
12 effective from one year to 3 years.

14 It provides that a credit for sales tax paid by a retailer  
on purchases for resale may be claimed on the return filed for  
16 the period in which the tax was paid, rather than on the return  
filed for the period in which the item was sold.

18 It decreases the period for requesting an off-road refund  
20 under the gasoline tax law from 15 months to 12 months for  
consistency with other similar provisions, clarifies that the 1¢  
22 reduction in the reimbursement applies to each gallon of fuel and  
that refund applications may be filed for other than monthly  
24 periods and eliminates convoluted and archaic language.

26 It increases the period for requesting a common carrier  
refund under the gasoline tax law from 9 months to 12 months for  
28 consistency with other similar provisions.

30 It increases the period for requesting a common carrier  
refund under the special fuel tax law from 9 months to 12 months  
32 for consistency with other similar provisions.

34 It decreases the period for requesting an off-road refund  
under the special fuel tax law from 15 months to 12 months for  
36 consistency with other similar provisions and clarifies that the  
1¢ reduction in the reimbursement applies to each gallon of fuel  
38 and that refund applications may be filed for other than monthly  
periods.

40 It requires nonresident taxpayers to include in Maine-source  
42 income any winnings from wagering or gambling activities  
conducted in Maine.

44 It clarifies that trusts and entities subject to the  
46 franchise tax on financial institutions are not required to  
withhold Maine income taxes from distributable Maine-source  
48 income of nonresident members.

2 It authorizes setoff of income tax refunds against  
liabilities arising from redeterminations under the Maine  
Residents Property Tax Program.

4  
6 It bars a refund of overpaid withheld income taxes to a  
pass-through entity if the overpayment results from income tax  
actually withheld from members of the pass-through entity and  
8 remitted to the Department of Administrative and Financial  
Services, Maine Revenue Services pursuant to the Maine Revised  
10 Statutes, Title 36, section 5250-B. Instead, the overpayment is  
refunded directly to the individual member when that member  
12 claims a withholding credit on the member's individual income tax  
return. This provision is necessary to prevent pass-through  
14 entities from receiving a refund of income tax withholding that  
is also claimed as a credit on the Maine income tax return of the  
16 members of the pass-through entity.

18 It provides for accrual of interest on debts attributable to  
a redetermination under the Maine Residents Property Tax Program  
20 and authorizes setoff of current-year benefits to recover  
overpayments from prior years. It also clarifies that appeals of  
22 redeterminations are governed by Title 36, section 151 and  
eliminates gender-specific language.

24  
26 It clarifies procedures relating to denial and recovery of  
excessive claims attributable to fraud or negligence under the  
Maine Residents Property Tax Program, replaces the special 1% per  
28 month rate of interest applicable to these debts with a rate  
generally applicable to overdue taxes and clarifies that intent  
30 is an element of the crime of filing a fraudulent claim for the  
claimant as well as for the preparer or the supplier of  
32 information or an assistant of those persons.

34 It clarifies that compensation received after 2003 from  
personal services performed in the State prior to 2004 by a  
36 nonresident individual is taxable to the State only if the  
personal services are performed in the State for more than 10  
38 days during the year in which the compensation is received. It  
further clarifies that compensation received after 2003 for  
40 personal services performed after 2003 by a nonresident  
individual is taxable to the State only if the personal services  
42 are performed in the State for more than 10 days during the year  
in which the compensation was earned.