

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2006

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**Legislative Document**

**No. 1711**

H.P. 1218

House of Representatives, December 20, 2005

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### **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.

Received by the Clerk of the House on December 14, 2005. 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 WOODBURY of Yarmouth.  
Cosponsored by Senator PERRY of Penobscot and  
Representative: McCORMICK of West Gardiner.

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

4                   **Sec. 1. 29-A MRSA §525, sub-§14** is enacted to read:

6                   **14. Venue.** A violation of this section is deemed to have  
8                   been committed in part at the principal office of the Secretary  
10                   of State. Prosecution under this section may be in the county  
12                   where the act to which the proceeding relates occurred or in  
14                   Kennebec County.

16                   **Sec. 2. 36 MRSA §113, sub-§4** is enacted to read:

18                   **4. Recording fees.** The State Controller may transfer from  
20                   the General Fund amounts authorized by the State Tax Assessor  
22                   equal to the fees imposed upon the State by a register of deeds  
24                   pursuant to Title 33, section 751. These amounts transferred must  
26                   be deposited into a dedicated, nonlapsing account to be used  
28                   solely for the purpose of paying those fees. Interest earned on  
30                   balances in the account accrue to the account. The assessor shall  
32                   notify the State Controller of the amounts to be transferred  
34                   pursuant to this subsection.

36                   **Sec. 3. 36 MRSA §115** is enacted to read:

38                   **§115. Payment by credit card**

40                   The State Tax Assessor may establish procedures permitting  
42                   payment of taxes by the use of credit cards. The assessor may  
44                   contract with one or more entities for the purpose of enabling  
46                   the assessor to accept and process credit card transactions only  
48                   if under any such contract the State does not incur any charges  
50                   or fees from accepting payment by credit card, the State does not  
                    have any liability to the credit card company or processor from  
                    nonpayment of credit card charges by the taxpayer, any fee  
                    associated with payment of taxes by credit card is disclosed to  
                    the taxpayer prior to commencement of the transaction and  
                    directly charged to the taxpayer and collected by the processor,  
                    all credit card payments are electronically transmitted to the  
                    State by the processor immediately upon approval of the credit  
                    transaction and the processor retains all responsibility for  
                    approving or rejecting all proposed credit card payments.

**Sec. 4. 36 MRSA §1752, sub-§1-D,** as amended by PL 2005, c.  
218, §12, is further amended to read:

**1-D. Casual sale.** "Casual sale" means an isolated  
transaction in which tangible personal property or a taxable  
service is sold other than in the ordinary course of repeated and  
successive transactions of like character by the person making  
the sale. "Casual sale" includes transactions at a bazaar, fair,

rummage sale, picnic or similar event by a civic, religious or fraternal organization that is not a registered retailer. The sale by a registered retailer of tangible personal property that that retailer has used in the course of the retailer's business is not a casual sale if that property is of like character to that sold by the retailer in the ordinary course of repeated and successive transactions. "Casual sale" does not include any transaction in which a retailer sells tangible personal property or a taxable service on behalf of the owner of that property or the provider of that service. "Casual sale" does not include any sale of tangible personal property or a taxable service that was purchased for resale, lease or rental in the ordinary course of business by the person making the sale.

**Sec. 5. 36 MRSA §1760, sub-§2,** as amended by PL 1997, c. 729, Pt. A, §1, is further amended to read:

**2. Certain governmental entities.** Sales to the State or any political subdivision of the State, or to the Federal Government, or to any unincorporated agency or instrumentality of either of them or to any incorporated agency or instrumentality of them wholly owned by them. ~~This exemption does not apply where title is held or taken as security for any financing arrangement.~~ This exemption also does not apply to corporations organized under Title IV, Part E of the Farm Credit Act of 1971, 12 United States Code, Sections 2211 to 2214.

**Sec. 6. 36 MRSA §1760, sub-§16,** as amended by PL 2003, c. 689, Pt. B, §6 and c. 705, §4 and affected by §14, 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 Health and Human Services, incorporated nonprofit residential care facilities and incorporated nonprofit assisted housing programs for the elderly licensed by the Department of Health and 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, 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 of biology or ecology or operating educational television or radio stations, schools, incorporated nonprofit organizations or their affiliates whose purpose is to provide literacy assistance or free clinical assistance to children with dyslexia and regularly organized churches or houses

of religious worship, ~~excepting sales, storage or use in~~  
~~activities that are mainly commercial enterprises.~~

**Sec. 7. 36 MRSA §1760, sub-§49**, as repealed and replaced by PL 1999, c. 499, §1, is amended to read:

**49. Child abuse and neglect councils; child advocacy organizations; community action agencies.** ~~Except for the sale, storage or use for activities that are mainly commercial enterprises, sales~~ Sales to:

A. Incorporated, nonprofit child abuse and neglect councils as defined in Title 22, section 3872, subsection 1-A;

B. Statewide organizations that advocate for children and that are members of the Medicaid Advisory Committee; and

C. Community action agencies designated in accordance with Title 22, section 5324.

**Sec. 8. 36 MRSA §1760, sub-§61**, as amended by PL 2003, c. 588, §9, is further amended to read:

**61. Construction contracts with exempt organizations.** Sales to a construction contractor or its subcontractor of tangible personal property that is to be physically incorporated in, and become a permanent part of, real property for sale to any organization or government agency provided exemption under this section, except as otherwise provided by section 1760-C.

**Sec. 9. 36 MRSA §1760-C**, as amended by PL 1999, c. 708, §31, is further amended to read:

**§1760-C. Exempt activities**

~~Unless otherwise provided by section 1760, the sales or use~~  
The tax exemptions provided by that section 1760 to an entity a person based upon its charitable, nonprofit or other public purposes apply only if the property or service purchased is intended to be used by the entity person primarily in the activity identified by the particular exemption. The tax exemptions provided by section 1760 to a person based upon its charitable, nonprofit or other public purposes do not apply where title is held or taken by the person as security for any financing arrangement. Exemption certificates issued by the State Tax Assessor pursuant to section 1760 must identify the exempt activity and must state that the certificate may be used by the holder only ~~to purchase~~ when purchasing property or services intended to be used by the holder primarily in the exempt activity. When an otherwise qualifying ~~exempt~~ person is

engaged in both exempt and nonexempt activities, an exemption certificate may be issued to the person only if the person has established to the satisfaction of the assessor that the applicant has adequate accounting controls to limit the use of the certificate to exempt purchases.

**Sec. 10. 36 MRSA §2557, sub-§3,** as enacted by PL 2003, c. 673, Pt. V, §25 and affected by §29, is amended to read:

**3. Hospitals, research centers, churches and schools.** Sales to incorporated hospitals, incorporated nonprofit nursing homes licensed by the Department of Health and Human Services, incorporated nonprofit residential care facilities licensed by the Department of Health and 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, 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 of biology or ecology or for operating educational television or radio stations, schools, incorporated nonprofit organizations or their affiliates whose purpose is to provide literacy assistance or free clinical assistance to children with dyslexia and regularly organized churches or houses of religious worship, ~~---excepting---sales,---storage---or---use---in activities---that---are---mainly---commercial---enterprises;~~

**Sec. 11. 36 MRSA §2557, sub-§13,** as enacted by PL 2003, c. 673, Pt. V, §25 and affected by §29, is amended to read:

**13. Child abuse and neglect councils; child advocacy organizations; community action agencies.** ~~Except-for-the-sale, storage---or---use---for---activities---that---are---mainly---commercial enterprises,---sales~~ Sales to:

A. Incorporated, nonprofit child abuse and neglect councils as defined in Title 22, section 3872, subsection 1-A;

B. Statewide organizations that advocate for children and that are members of the Medicaid Advisory Committee; and

C. Community action agencies designated in accordance with Title 22, section 5324;

**Sec. 12. 36 MRSA §2557, sub-§31,** as enacted by PL 2005, c. 218, §36, is amended to read:

2       **31. Construction contracts with exempt organizations.** Sales  
to a construction contractor or its subcontractor of fabrication  
4       services that are to be physically incorporated in, and become a  
permanent part of, real property for sale to any organization or  
6       government agency provided exemption under this section, except  
as otherwise provided by section 2560.

8       **Sec. 13. 36 MRSA §2560** is enacted to read:

10       **§2560. Exempt activities**

12       A tax exemption provided by section 2557 to a person based  
upon its charitable, nonprofit or other public purposes applies  
14       only if the service purchased is intended to be used by the  
person primarily in the activity identified by the particular  
16       exemption. A tax exemption provided by section 2557 to a person  
based upon its charitable, nonprofit or other public purposes  
18       does not apply where title is held or taken by the person as  
security for any financing arrangement. An exemption certificate  
20       issued by the State Tax Assessor pursuant to section 2557 must  
identify the exempt activity and must state that the certificate  
22       may be used by the holder only when purchasing services intended  
to be used by the holder primarily in the exempt activity. When  
24       an otherwise qualifying person is engaged in both exempt and  
nonexempt activities, an exemption certificate may be issued to  
26       the person only if the person has established to the satisfaction  
of the assessor that the applicant has adequate accounting  
28       controls to limit the use of the certificate to exempt purchases.

30       **Sec. 14. 36 MRSA §3204-B, sub-§4** is enacted to read:

32       **4. Venue.** A violation of this section is deemed to have  
been committed in part at the principal office of the assessor.  
34       Prosecution under this section may be in the county where the act  
to which the proceeding relates occurred or in Kennebec County.

36       **Sec. 15. 36 MRSA §4062, sub-§2-A,** as enacted by PL 2005, c.  
38       12, Pt. N, §2 and affected by §4, is amended to read:

40       **2-A. Maine elective property.** "Maine elective property"  
means all property in which the decedent at the time of death had  
42       a qualified income interest for life and with respect to which,  
for purposes of determining the tax imposed by this chapter on  
44       the estate of a predeceased spouse of the decedent, the federal  
taxable estate of such that predeceased spouse was decreased  
46       pursuant to subsection 1-A, paragraph A, subparagraph (3). The  
value of Maine elective property is the value finally determined  
48       by the assessor in accordance with the Code as if such property  
were includible in the decedent's federal gross estate pursuant  
50       to the Code, Section 2044 and, in the case of estates that do not

incur a federal estate tax, as if the estate had incurred a federal estate tax.

**Sec. 16. 36 MRSA §4062, sub-§2-B, ¶C**, as enacted by PL 2005, c. 12, Pt. N, §2 and affected by §4, is amended to read:

C. With respect to which an election is made, on a return filed timely with the State Tax Assessor, to treat the property as Maine qualified terminable interest property for purposes of the tax imposed by this chapter. The amount of property with respect to which such election is made may not be greater than the amount, if any, by which the applicable exclusion amount determined as of the date of the decedent's death using the Code, Section 2010(c) in effect on that date exceeds the applicable exclusion amount determined as of the date of the decedent's death using the Code, Section 2010(c) in effect on December 31, 2000. ~~The--value--of--Maine qualified-terminable-interest-property-is-the-value-finally determined-by-the-assessor-in-accordance-with-the-Code-and, in-the-case-of-estates-that-do-not-incur-a-federal-estate tax,-as-if-the-estate-had-incurred-a-federal-estate-tax.~~

**Sec. 17. 36 MRSA §4062, sub-§8** is enacted to read:

**8. Value.** When determining value for purposes of this chapter, "value" means, with respect to an estate or to property included in an estate, including Maine qualified terminable interest property:

A. For estates of decedents dying before January 1, 2003, the value as finally determined for federal estate tax purposes;

B. For estates of decedents dying after December 31, 2002 that incur a federal estate tax, the value as finally determined for federal estate tax purposes unless the State Tax Assessor has determined a different value in accordance with the Code; or

C. For estates of decedents dying after December 31, 2002 that do not incur a federal estate tax, the value as determined by the assessor in accordance with the Code as if the estate had incurred a federal estate tax.

**Sec. 18. 36 MRSA §4063**, as amended by PL 2003, c. 673, Pt. D, §3, is repealed and the following enacted in its place:

**§4063. Tax on estate of resident**



2        A tax is imposed upon the transfer of the estate of every  
3        person who dies after December 31, 2002 and who, at the time of  
4        death, was a resident of this State. The amount of this tax is  
5        equal to the federal credit multiplied by a fraction, the  
6        numerator of which is that portion of the decedent's federal  
7        gross estate that consists of real and tangible personal property  
8        located in the State plus all intangible personal property and  
9        the denominator of which is the decedent's federal gross estate.

10        **Sec. 19. 36 MRSA §4063-A, sub-§2,** as enacted by PL 2001, c.  
11        559, Pt. GG, §5 and affected by §26, is repealed.

12        **Sec. 20. 36 MRSA §4064, first ¶,** as amended by PL 2005, c. 218,  
13        §42, is further amended to read:

14        A tax is imposed upon the transfer of real property and  
15        tangible personal property situated in this State and held by an  
16        individual who dies prior to January 1, 2002 or after December  
17        31, 2002 and who at the time of death was not a resident of this  
18        State. When real or tangible personal property has been  
19        transferred into a trust or a limited liability company or other  
20        pass-through entity, the tax imposed by this section applies as  
21        if the trust or limited liability company or other pass-through  
22        entity did not exist and the property was personally owned by the  
23        decedent. Maine property is subject to the tax imposed by this  
24        section to the extent that such property is included in the  
25        decedent's federal gross estate. The amount of this tax is a sum  
26        equal to that proportion of the federal credit that the value of  
27        the decedent's Maine real and tangible personal property in this  
28        State bears to the value of the decedent's federal gross estate.  
29        ~~All property values under this section are as finally determined~~  
30        ~~for federal estate tax purposes, except that for estates of~~  
31        ~~decedents dying after December 31, 2002 that do not incur a~~  
32        ~~federal estate tax, all property values are as finally determined~~  
33        ~~by the assessor in accordance with the Code as if the estate had~~  
34        ~~incurred a federal estate tax.~~ The share of the federal credit  
35        used to determine the amount of a nonresident individual's estate  
36        tax under this section is computed without regard to whether the  
37        specific real or tangible personal property located in the State  
38        is marital deduction property.  
39

40        **Sec. 21. 36 MRSA §4064-A, sub-§1,** as enacted by PL 2001, c.  
41        559, Pt. GG, §7 and affected by §26, is amended to read:

42        **1. Amount.** A tax is imposed upon the transfer of real  
43        property and tangible personal property situated in this State  
44        and held by an individual who dies during the calendar year 2002  
45        and who at the time of death was not a resident of this State.  
46        When real or tangible personal property has been transferred into  
47        a trust, the tax imposed by this section applies as if the trust  
48         
49         
50

2 did not exist and the property was personally owned by the  
3 decedent. Maine property is subject to the tax imposed by this  
4 section to the extent that such property is included in the  
5 decedent's gross estate as finally determined for federal estate  
6 tax purposes. The amount of this tax is equal to the lesser of:

7 A. That proportion of the federal estate tax calculated  
8 prior to the application of the federal credit that the  
9 value of Maine real and tangible personal property taxed in  
10 this State that qualifies for the credit bears to the value  
11 of the decedent's total federal gross estate; and

12 B. That proportion of the federal credit divided by .75  
13 that the value of Maine real and tangible personal property  
14 taxed in this State that qualifies for the credit bears to  
15 the value of the decedent's total federal gross estate.

16  
17 ~~All values are as finally determined for federal estate tax~~  
18 ~~purposes.~~ The share of the federal credit used to determine the  
19 amount of a nonresident individual's estate tax under this  
20 section is computed without regard to whether the specific real  
21 or tangible personal property located in the State is marital  
22 deduction property.

23  
24 **Sec. 22. 36 MRSA §4071, sub-§1,** as amended by PL 2003, c. 673,  
25 Pt. D, §8 and affected by §9, is further amended to read:

26  
27 **1. Final federal determination.** A final federal  
28 determination as to any of the following issues shall also  
29 ~~determine~~ determines the same issue for purposes of the tax under  
30 this chapter:

31 A. The inclusion in the federal gross estate of any item of  
32 property or interest in property;

33 B. The allowance of any item claimed as a deduction from  
34 the federal gross estate; or

35 ~~C. The value or amount of any such item;~~

36 ~~D. The value of the federal gross estate generally; or~~

37 E. For estates of decedents dying before January 1, 2003,  
38 the amount of the federal credit.

39  
40 **Sec. 23. 36 MRSA §4071, sub-§3,** as enacted by PL 1981, c. 451,  
41 §7, is amended to read:

42  
43 **3. Items entering computation of tax.** If there has been a  
44 final federal determination with respect to a decedent's federal

2 estate tax, any item, but not its value, entering into the  
4 computation of the tax shall ~~is~~ be deemed to have been the  
subject of the final federal determination, whether or not  
specifically adjusted thereby.

6 **Sec. 24. 36 MRSA §4072**, as amended by PL 1999, c. 38, §1, is  
further amended to read:

8  
10 **§4072. Lien for taxes**

12 ~~All Any~~ property ~~subject-to-taxes-under-this-chapter, or~~  
~~interest in whatever-form property, the transfer of investment-it~~  
~~may-happen-to-be, which is subject to tax under this chapter, is~~  
14 charged with a lien for all taxes, interest and penalties that  
are or may become due ~~on~~ under this chapter with respect to that  
16 property. The lien arises at the time of the decedent's death  
and continues for 10 years, except that the lien is not valid  
18 against property used for the payment of charges against the  
estate and expenses of administration allowed by any court with  
20 subject matter jurisdiction. The lien does not attach to any  
22 ~~real-or~~ personal property after the property has been sold or  
disposed of for value by the personal representative, trustee or  
24 surviving joint tenant. Upon payment of ~~these-taxes~~ the tax,  
interest and penalties due under this chapter, or upon  
determination that no tax is due, the State Tax Assessor shall  
26 upon request execute a discharge of the tax lien for recording in  
the appropriate registry or registries of deeds.

28  
30 ~~Any-lien-that-attached-to-real-property-prior-to-September~~  
~~30,-1989-and-after-the-property-was-sold-or-disposed-of-for-value~~  
~~by-the-personal-representative,-trustee-or-surviving-joint-tenant~~  
32 ~~is-released-by-operation-of-this-section.~~

34 **Sec. 25. 36 MRSA §4366-A, sub-§2**, as amended by PL 2005, c.  
457, Pt. AA, §§4 and 5 and affected by §8, is further amended to  
36 read:

38 **2. Provided to sellers.** The State Tax Assessor shall  
provide stamps suitable to be affixed to packages of cigarettes  
40 as evidence of the payment of the tax imposed by this chapter.  
The assessor may permit a licensed distributor to pay for the  
42 stamps within 30 days after the date of purchase, if a bond  
satisfactory to the assessor in an amount not less than 50% of  
44 the sale price of the stamps has been filed with the assessor  
conditioned upon payment for the stamps. Such a distributor may  
46 continue to purchase stamps on a 30-day deferral basis only if it  
remains current with its cigarette tax obligations. The assessor  
48 may not sell additional stamps to a distributor that has failed  
to pay in full within 30 days for stamps previously purchased  
50 until such time as the overdue payment is received. The assessor

shall sell cigarette stamps to licensed distributors at the following discounts from their face value:

A. For stamps at the face value of 37 mills sold through September 30, 2001, 2.5%;

B. For stamps at the face value of 50 mills sold prior to July 1, 2002, 2.16%;

C. For stamps at the face value of 50 mills sold on or after July 1, 2002, 2.03%; and

D. For stamps at the face value of 100 mills, 1.15%.

**Sec. 26. 36 MRSA §5122, sub-§2, ¶T**, as amended by PL 2005, c. 416, §2, is further amended to read:

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

For income tax years beginning on or after January 1, 2004, an amount equal to the total premiums spent for qualified long-term care insurance contracts certified under Title 24-A, section 5075-A, as long as the amount subtracted is 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 itemized deduction pursuant to section 5125; and

**Sec. 27. 36 MRSA §5122, sub-§2, ¶U**, as enacted by PL 2005, c. 416, §3, is amended to read:

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

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

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

2 (b) "Eligible timberlands" means land of at least  
4 10 acres located in the State and used primarily  
6 for the growth of trees to be commercially  
8 harvested. Land that would otherwise be included  
10 within this definition may not be excluded because  
12 of:  
14  
16 (i) Use of the land for multiple public  
18 recreation activities;  
20  
22 (ii) Statutory or governmental restrictions  
24 that prevent commercial harvesting of trees  
or require a primary use of the land other  
than commercial harvesting;  
26  
28 (iii) Deed restrictions, restrictive  
30 covenants or organizational charters that  
32 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  
34  
36 (iv) Past or present multiple use for  
38 mineral exploration.  
40  
42 (c) "Forest products that have commercial value"  
44 means logs, pulpwood, veneer, bolt wood, wood  
46 chips, stud wood, poles, pilings, biomass, fuel  
48 wood, Christmas trees, maple syrup, nursery  
products used for ornamental purposes, wreaths,  
bough material or cones or other seed products.  
  
(d) "Sustainably managed" means:  
  
(i) A forest management and harvest plan, as  
defined in section 573, subsection 3-A, has  
been prepared for the eligible timberlands  
and has been in effect for the entire time  
period used to compute the amount of the  
subtraction modification under this  
paragraph; and  
  
(ii) The taxpayer has received a written  
statement from a licensed forester certifying  
that, as of the time of the sale, the  
eligible timberlands have been managed in  
accordance with the plan under subdivision  
(i) during that period.

(2) To the extent they are included in the taxpayer's federal adjusted gross income, the following amounts must be subtracted from federal adjusted gross income:

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

(b) For eligible timberlands held by the taxpayer for at least an 11-year period beginning on or after January 1, 2005 but less than a 12-year period beginning on or after January 1, 2005, 2/15 of the gain recognized on the sale of the eligible timberlands;

(c) For eligible timberlands held by the taxpayer for at least a 12-year period beginning on or after January 1, 2005 but less than a 13-year period beginning on or after January 1, 2005, 1/5 of the gain recognized on the sale of the eligible timberlands;

(d) For eligible timberlands held by the taxpayer for at least a 13-year period beginning on or after January 1, 2005 but less than a 14-year period beginning on or after January 1, 2005, 4/15 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, 1/3 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, 2/5 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, 7/15

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

4 (h) For eligible timberlands held by the taxpayer  
for at least a 17-year period beginning on or  
6 after January 1, 2005 but less than an 18-year  
period beginning on or after January 1, 2005, 8/15  
8 of the gain recognized on the sale of the eligible  
timberlands;

10 (i) For eligible timberlands held by the taxpayer  
12 for at least an 18-year period beginning on or  
after January 1, 2005 but less than a 19-year  
14 period beginning on or after January 1, 2005, 3/5  
of the gain recognized on the sale of the eligible  
16 timberlands;

18 (j) For eligible timberlands held by the taxpayer  
for at least a 19-year period beginning on or  
20 after January 1, 2005 but less than a 20-year  
period beginning on or after January 1, 2005, 2/3  
22 of the gain recognized on the sale of the eligible  
timberlands;

24 (k) For eligible timberlands held by the taxpayer  
for at least a 20-year period beginning on or  
26 after January 1, 2005 but less than a 21-year  
28 period beginning on or after January 1, 2005,  
11/15 of the gain recognized on the sale of the  
30 eligible timberlands;

32 (l) For eligible timberlands held by the taxpayer  
for at least a 21-year period beginning on or  
34 after January 1, 2005 but less than a 22-year  
period beginning on or after January 1, 2005, 4/5  
36 of the gain recognized on the sale of the eligible  
timberlands;

38 (m) For eligible timberlands held by the taxpayer  
40 for at least a 22-year period beginning on or  
after January 1, 2005 but less than a 23-year  
42 period beginning on or after January 1, 2005,  
13/15 of the gain recognized on the sale of the  
44 eligible timberlands;

46 (n) For eligible timberlands held by the taxpayer  
for at least a 23-year period beginning on or  
48 after January 1, 2005 but less than a 24-year  
period beginning on or after January 1, 2005,

2                   14/15 of the gain recognized on the sale of the  
                  eligible timberlands; or

4                   (o) For eligible timberlands held by the taxpayer  
6                   for at least a 24-year period beginning on or  
                  after January 1, 2005, all of the gain recognized  
8                   on the sale of the eligible timberlands.

10                  (3) Taxpayers claiming this credit must attach a sworn  
12                  statement from a forester licensed pursuant to Title  
14                  32, chapter 76 that the timberlands for which the  
16                  credit is claimed have been managed sustainably. For  
18                  the purposes of this subparagraph, "sustainably" means  
20                  that the timberlands for which the credit is claimed  
                  have been managed to protect soil productivity and to  
                  maintain or improve stand productivity and timber  
                  quality; known occurrences of threatened or endangered  
                  species and rare or exemplary natural communities;  
                  significant wildlife habitat and essential wildlife  
                  habitat; and water quality, wetlands and riparian zones.

22                  Upon request of the State Tax Assessor, the Director of  
24                  the Bureau of Forestry within the Department of  
26                  Conservation may provide assistance in determining  
28                  whether timberlands for which the credit is claimed  
30                  have been managed sustainably. When assistance is  
                  requested under this subparagraph, the director or the  
                  director's designee may enter and examine the  
                  timberlands for the purpose of determining whether the  
                  timberlands have been managed sustainably.

32                  In the case of timberlands owned by an entity that is  
34                  treated as a pass-through entity for income tax purposes,  
36                  the land must be treated as eligible timberland if ownership  
38                  and use of the land by the pass-through entity satisfies the  
40                  requirements of this paragraph. If the owner of the  
42                  eligible timberlands is an S corporation, the taxpayer must  
                  subtract the owner's pro rata share of the gain. If the  
                  owner of the timberlands is a partnership or limited  
                  liability company taxed as a partnership, the taxpayer must  
                  subtract the taxpayer's distributive share of the gain,  
                  subject to the percentage limitations provided in this  
                  paragraph.

44                  This modification may not reduce Maine taxable income to  
46                  less than zero. To the extent this modification results in  
48                  Maine taxable income that is less than zero for the taxable  
50                  year, the excess negative modification amount may be carried  
                  forward and applied as a subtraction modification for up to  
                  10 taxable years. The entire amount of the excess negative



modification must be carried to the earliest of the taxable years to which, by reason of this subsection, the negative modification may be carried and then to each of the other taxable years to the extent the unused negative modification is not used for a prior taxable year. Earlier carry-forward modifications must be used before newer modifications generated in later years.;

**Sec. 28. 36 MRSA §5122, sub-§2, ¶V** is enacted to read:

V. The taxpayer's pro rata share of an amount that was previously added back to federal taxable income pursuant to section 5200-A, subsection 1, paragraph H by an S corporation of which the taxpayer is a shareholder and by which, absent the S corporation election, the corporation could have reduced its federal taxable income for the taxable year pursuant to section 5200-A, subsection 2, paragraph H;

**Sec. 29. 36 MRSA §5122, sub-§2, ¶W** is enacted to read:

W. The taxpayer's pro rata share of an amount that was previously added back to federal taxable income pursuant to section 5200-A, subsection 1, paragraph M by an S corporation of which the taxpayer is a shareholder and by which, absent the S corporation election, the corporation could have reduced its federal taxable income for the taxable year pursuant to section 5200-A, subsection 2, paragraph L; and

**Sec. 30. 36 MRSA §5122, sub-§2, ¶X** is enacted to read:

X. The taxpayer's pro rata share of an amount that was previously added back to federal taxable income pursuant to section 5200-A, subsection 1, paragraph N by an S corporation of which the taxpayer is a shareholder and by which, absent the S corporation election, the corporation could have reduced its federal taxable income for the taxable year pursuant to section 5200-A, subsection 2, paragraph M.

**Sec. 31. 36 MRSA §6664**, as enacted by PL 2005, c. 12, Pt. BBB, §5, is amended to read:

#### **§6664. Report**

**1. Report to Legislature.** By January ~~March~~ 15th annually, the State Tax Assessor shall submit to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing

committee of the Legislature having jurisdiction over taxation matters a report that contains the following information with regard to persons receiving benefits under this chapter:

A. A list of persons receiving reimbursement for property taxes both under this chapter and under a tax increment financing agreement;

B. The total tax increment financing district property value for each person;

C. The municipality of each tax increment financing district and the property tax rate for that municipality;

D. The total tax increment financing district property taxes paid, categorized by real property and personal property;

E. The total of tax increment financing credit enhancement agreement reimbursement for property taxes paid categorized by real property and personal property;

F. The total reimbursement received by each person under this chapter; and

G. The extent of overlap between reimbursement for property taxes on personal property under this chapter and under a tax increment financing agreement.

**2. Cooperation.** The Claimants for reimbursement under this chapter, the Department of Economic and Community Development and municipalities shall provide any information requested by the State Tax Assessor for the completion of the report required by this section.

**Sec. 32. Application.** Those sections of this Act that repeal and replace the Maine Revised Statutes, Title 36, section 4063 and amend Title 36, section 4071, subsections 1 and 3 apply to the estate of any decedent dying on or after January 1, 2003. That section of this Act that amends Title 36, section 4072 applies to the estate of any decedent dying on or after January 1, 2006. Those sections of this Act that enact Title 36, section 5122, subsection 2, paragraphs V, W and X apply to tax years beginning on or after January 1, 2006.

**Sec. 33. Retroactivity.** That section of this Act that amends the Maine Revised Statutes, Title 36, section 4366-A, subsection 2 applies retroactively to September 19, 2005. That section of this Act that amends Title 36, section 6664 applies retroactively to June 29, 2005.

**Sec. 34. Effective date.** That section of this Act that enacts the Maine Revised Statutes, Title 36, section 113, subsection 4 is effective July 1, 2007.

## SUMMARY

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

It allows a fuel tax registration violation to be prosecuted in Kennebec County or in the county where the violation occurred.

It authorizes the payment of fees imposed for recording a lien or lien discharge directly from the General Fund.

It authorizes the State Tax Assessor to establish procedures for payment of taxes by credit card and to contract with one or more entities for the purpose of accepting and processing credit card transactions.

It establishes that sales of property or services purchased for resale, lease or rental in the ordinary course of business by the person making the sale are not casual sales.

It clarifies that a sales and use tax exemption provided to a person based upon its charitable, nonprofit or other public purposes applies only if the property or service purchased is intended to be used by the person primarily in the activity identified by the particular exemption.

It clarifies that a service provider tax exemption provided to a person based upon its charitable, nonprofit or other public purposes applies only if the service purchased is intended to be used by the person primarily in the activity identified by the particular exemption.

It allows a dyed fuel violation to be prosecuted in Kennebec County or in the county where the violation occurred.

It enacts a definition of "value" in Maine estate tax law and repeals language elsewhere in the law that effectively defines "value." The new definition provides that the value of an estate or property included in an estate is the value determined by the State Tax Assessor in accordance with the Internal Revenue Code.

It permits the State Tax Assessor to allow a licensed cigarette distributor up to 30 days to pay for cigarette tax

2 stamps if the distributor has posted a bond of 50% of the amount  
of the cigarette stamp purchases.

4 It allows bonus depreciation, Section 179 expense and net  
operating loss addition modifications claimed by a C corporation  
6 to be recaptured by individual shareholders of the corporation if  
it elects to be treated as an S corporation in a subsequent year.

8  
10 It changes the date for the annual report to the Legislature  
regarding the BETR/TIF overlap from January 15th to March 15th  
and requires BETR applicants to provide BETR/TIF overlap  
12 information to the State Tax Assesor.

14 It excludes from the Maine estate tax real and tangible  
personal property owned by a resident of the State that is not  
16 located in the State.

18 It provides that only a sale of personal property for value  
will qualify for an automatic estate tax lien release. It  
20 clarifies the commencement and duration of the estate tax lien.