

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2006

Legislative Document

No. 1751

S.P. 668

In Senate, December 30, 2005

An Act Concerning Technical Changes to the Tax Laws

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

Received by the Secretary of the Senate on December 28, 2005. Referred to the Committee on Taxation pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator PERRY of Penobscot.
Cosponsored by Representative WOODBURY of Yarmouth and
Representative: McCORMICK of West Gardiner.

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

2
4 **Sec. 1. 36 MRSA §1752, sub-§6-C** is enacted to read:

6 **6-C. Manufactured housing.** "Manufactured housing" has the
same meaning as defined in Title 10, section 9002, subsection 7.

8 **Sec. 2. 36 MRSA §1760, sub-§23-C**, as affected by PL 2003, c.
10 614, §9 and amended by c. 688, Pt. B, §12 and affected by §13, is
further amended to read:

12 **23-C. Certain vehicles purchased or leased by**
14 **nonresidents.** Sales or leases of the following vehicles to a
nonresident if the vehicle is intended to be driven or
transported outside the State immediately upon delivery:

16 A. ~~Motor vehicles, except automobiles--rented-for-a-period~~
18 ~~of-less-than-one-year,-all-terrain-vehicles-and-snowmobiles~~
~~as-defined-in-Title-12,-section-13001;:~~

20 (1) Automobiles rented for a period of less than one
22 year; and

24 (2) All-terrain vehicles and snowmobiles as defined in
26 Title 12, section 13001;

28 B. Semitrailers;

30 C. Aircraft; and

32 D. ~~Truck-bodies-and-trailers-manufactured-in-the-State,-and~~

34 E. Camper trailers, including truck campers.

36 If the vehicles are registered for use in the State within 12
months of the date of purchase, the person seeking registration
is liable for use tax on the basis of the original purchase price.

38 Notwithstanding section 1752-A, for purposes of this subsection,
40 the term "nonresident" may include an individual, an association,
a society, a club, a general partnership, a limited partnership,
42 a domestic or foreign limited liability company, a trust, an
estate, a domestic or foreign corporation and any other legal
44 entity.

46 **Sec. 3. 36 MRSA §1760, sub-§40**, as repealed and replaced by PL
1987, c. 497, §37, is amended to read:

48 **40. Manufactured housing.** Sales of ~~mobile-or-modular-homes~~
50 ~~includes:~~

- 2 A. ~~Used mobile-and-modular-homes~~ manufactured housing; and
- 4 B. ~~New mobile--and--modular--homes--~~ Exemption is limited
6 manufactured housing to the extent of all costs, other than
8 materials, included in the sale price, but the exemption may
 not to exceed 50% of the sale price.

10 **Sec. 4. 36 MRSA §1952-B**, as amended by PL 1991, c. 846, §26,
is further amended to read:

12 **§1952-B. Manufactured housing**

14 The tax imposed by ~~chapters-211-to-225~~ this Part on the sale
or use of ~~any-type-of~~ manufactured housing, as defined in Title
16 ~~30-A,--section-4358,--subsection-1,--paragraph-A,~~ except when the
dealer has collected the tax in full, must be paid by the
18 purchaser to the State Tax Assessor. ~~The State--Tax--Assessor~~
assessor shall provide a tax receipt to the purchaser, ~~--which,~~
20 ~~upon.~~ Upon request by the municipal officials, ~~--assessors-of-a~~
~~plantation~~ or the Maine Land Use Regulation Commission, the
22 receipt must be made available by the purchaser to certify that
the tax ~~imposed-by-chapters-211-to-225~~ has been paid, pursuant to
24 Title 30-A, section 4358, subsection 4 or Title 30-A, section
7060, subsection 1, paragraph C.

26 A valid bill of sale from a dealer showing that the tax has
28 been collected in full serves to certify that the tax ~~imposed-by~~
~~chapters--211-to-225~~ has been paid, pursuant to Title 30-A,
30 section 4358, subsection 4, or Title 30-A, section 7060,
subsection 1, paragraph C, in lieu of a tax receipt provided by
32 the ~~State-Tax-Assessor~~ assessor.

34 **Sec. 5. 36 MRSA §4064, first ¶**, as amended by PL 2005, c. 218,
§42, is further amended to read:

36 A tax is imposed upon the transfer of real property and
38 tangible personal property situated in this State and held by an
individual who dies prior to January 1, 2002 or after December
40 31, 2002 and who at the time of death was not a resident of this
State. When real or tangible personal property has been
42 transferred into a trust or a limited liability company or other
pass-through entity, the tax imposed by this section applies as
44 if the trust or limited liability company or other pass-through
entity did not exist and the property was personally owned by the
46 decedent. Maine property is subject to the tax imposed by this
section to the extent that such property is either included in
48 the decedent's federal gross estate or is Maine elective
property. The amount of this tax is a sum equal to that
50 proportion of the federal credit that the value of the decedent's

2 Maine real and tangible personal property in this State bears to
the value of the decedent's federal gross estate. All property
4 values under this section are as finally determined for federal
estate tax purposes, except that for estates of decedents dying
6 after December 31, 2002 that do not incur a federal estate tax,
all property values are as finally determined by the assessor in
8 accordance with the Code as if the estate had incurred a federal
estate tax. The share of the federal credit used to determine
10 the amount of a nonresident individual's estate tax under this
section is computed without regard to whether the specific real
12 or tangible personal property located in the State is marital
deduction property.

14 **Sec. 6. 36 MRSA §5200, sub-§1**, as enacted by PL 2005, c. 457,
Pt. FFF, §1 and affected by §2, is amended to read:

16 **1. Imposition and rate of tax.** A tax is imposed for each
18 taxable year at the following rates on each taxable corporation
~~or~~ and on each group of corporations that derives income from a
20 unitary business carried on by 2 or more members of an affiliated
group:

| 22 If the Maine income is: | The tax is: |
|------------------------------------|--|
| 24 Not over \$25,000 | 3.5% of Maine 26 <u>the</u> income |
| 28 \$25,000 but not over \$75,000 | \$875 plus 7.93% 30 of <u>the</u> excess over \$25,000 |
| 32 \$75,000 but not over \$250,000 | \$4,840 plus 34 8.33% of <u>the</u> excess over \$75,000 |
| 36 \$250,000 or more | \$19,418 plus 38 8.93% of <u>the</u> excess over 40 \$250,000 |

42 In the case of an affiliated group of corporations engaged in a
unitary business with activity taxable only by Maine, the rates
44 provided in this subsection are applied only to the first
\$250,000 of the Maine net income of the entire group and must be
46 apportioned equally among the taxable corporations unless those
taxable corporations jointly elect a different apportionment. The
48 balance of the Maine net income of the entire group is taxed at
8.93%.

50

2 In the case of an affiliated group of corporations engaged in a
unitary business with activity taxable both within and without
4 this State, the rates provided in this subsection are applied
only to the first \$250,000 of the net income of the entire group
6 and must be apportioned equally among the taxable corporations
unless those taxable corporations jointly elect a different
8 apportionment. The balance of the net income of the entire group
is taxed at 8.93%.

10 **Sec. 7. 36 MRSA §5203-C, sub-§1, ¶D**, as enacted by PL 2003, c.
673, Pt. JJ, §3 and affected by §6, is amended to read:

12
14 D. "Exemption amount" means the applicable exemption as
provided by the Code, Section 55(d) as of December 31, 2002,
16 except that tentative alternative minimum taxable income as
determined under paragraph H G must be substituted in the
18 computation of the phase-out under the Code, Section
55(d)(3).

20 **Sec. 8. 36 MRSA §5203-C, sub-§4, ¶A**, as enacted by PL 2003, c.
673, Pt. JJ, §3 and affected by §6, is amended to read:

22
24 A. A minimum tax credit is allowed against the liability
arising under this Part for any taxable year other than
26 withholding tax liability. The minimum tax credit equals
the excess, if any, of the adjusted alternative minimum tax,
28 reduced by the credit for tax paid to other jurisdictions
determined under subsection 3 and the Pine Tree Development
30 Zone tax credit provided by section 5219-W, that was imposed
for all prior taxable years beginning after 2003 over the
32 amount allowable as a credit under this subsection for such
prior taxable years, plus unused minimum tax credits from
34 years beginning after 1990.

36 **Sec. 9. 36 MRSA §5206-D, sub-§9**, as enacted by PL 1997, c.
404, §5 and affected by §10, is amended to read:

38 **9. Loan.** "Loan" means any extension of credit resulting
from direct negotiations between the taxpayer and its customer,
40 or the purchase, in whole or in part, of the extension of credit
from another. ~~Loans--include~~ "Loan" includes participations,
42 syndications and leases treated as loans for federal income tax
purposes. ~~Loans--do~~ "Loan" does not include properties treated as
44 loans under the Code, Section 595 as of December 31, 1995;
futures or forward contracts; options; notional principal
46 contracts such as swaps; credit card receivables, including
purchased credit card relationships; noninterest-bearing balances
48 due from depository institutions; cash items in the process of
collection; federal funds sold; securities purchased under
50 agreements to resell; assets held in a trading account;

2 securities; interests in a REMIC or other mortgage-backed or
asset-backed security; and other similar items.

4 **Sec. 10. 36 MRSA §5219-D**, as amended by PL 1997, c. 504, §17,
is repealed.

6 **Sec. 11. 36 MRSA §5219-Q, sub-§1, ¶A**, as enacted by PL 1999,
8 c. 401, Pt. NNN, §6 and affected by §§8 and 9 and amended by PL
2003, c. 689, Pt. B, §6, is further amended to read:

10 A. Is accredited by an independent, nationally recognized
12 program approved by the Department of Health and Human
Services, Office of ~~Head-Start-and~~ Child Care and Head Start;

14 **Sec. 12. 36 MRSA §5219-Q, sub-§1, ¶B**, as enacted by PL 1999,
16 c. 401, Pt. NNN, §6 and affected by §§8 and 9 and amended by PL
2003, c. 689, Pt. B, §6, is further amended to read:

18 B. Utilizes recognized quality indicators for child care
20 services approved by the Department of Health and Human
Services, Office of ~~Head-Start--and~~ Child Care and Head
22 Start; and

24 **Sec. 13. 36 MRSA §5219-Q, sub-§1-A**, as enacted by PL 1999, c.
708, §47 and amended by PL 2003, c. 689, Pt. B, §6, is further
26 amended to read:

28 **1-A. Certification.** Upon application by an investor, the
Department of Health and Human Services, Office of ~~Head-Start-and~~
30 Child Care and Head Start shall certify if an investment in a
child care site contributed significantly toward the ability of
32 the child care site to improve its level of child care services
toward the goal of providing quality child care services. The
34 department shall send a list of taxpayers making certified
investments in the previous year to the State Tax Assessor by
36 February 1st annually.

38 **Sec. 14. 36 MRSA §5220, sub-§3**, as amended by PL 2003, c. 391,
§11 and affected by §14, is further amended to read:

40 **3. Resident estates or trusts.** Every resident estate or
42 trust that has for the taxable year:

44 A. Any Maine taxable income as defined in section 5163; ~~or~~

46 B. Gross income of \$10,000 or more, regardless of the
amount of Maine taxable income; or

48 C. A Maine income tax liability pursuant to this Part;
50

2 **Sec. 15. 36 MRSA §5220, sub-§4**, as amended by PL 2003, c. 391,
§11 and affected by §14, is further amended to read:

4 **4. Certain nonresident estates or trusts.** Every nonresident
estate or trust that has for the taxable year:

6 A. Any Maine taxable income as determined under section
8 5175, subsection 2; ~~or~~

10 B. Gross income of \$10,000 or more, regardless of the
amount of Maine taxable income; or

12 C. A Maine income tax liability pursuant to this Part;

14 **Sec. 16. 36 MRSA §5255**, as amended by PL 1985, c. 535, §26,
16 is further amended to read:

18 **§5255. Failure to withhold**

20 If--a A person who fails to deduct and withhold tax as
22 required,--and--thereafter by this chapter is relieved from
liability for that tax to the extent that the tax against which
24 such that tax may be credited is has been paid,--the--tax--se
required--to--be--deducted--and--withheld--shall--not--be--collected--from
26 the--person, but the person shall is not be relieved from
liability for any additions to tax, penalties or interest
28 otherwise applicable in with respect to such the failure to
deduct and withhold tax as required by this chapter.

30 **Sec. 17. 36 MRSA §6201, sub-§9**, as amended by PL 2005, c. 457,
Pt. EEE, §1 and affected by §2, is further amended to read:

32 **9. Income.** "Income" means the sum of Maine adjusted gross
34 income determined in accordance with Part 8; contributions,
including catch-up contributions, to any pension, annuity or
36 retirement plan to the extent not included in Maine adjusted
gross income, including contributions to an individual retirement
38 account under Section 408 of the Code, a simplified employee
pension plan, a salary reduction simplified employee pension
40 plan, a savings incentive match plan for employees plan and a
deferred compensation plan under Section 457 of the Code, and
42 cash or deferred arrangements under Section 401 of the Code and
qualified, or "Keogh," accounts; nontaxable contributions to a
44 flexible spending arrangement under Section 125 of the Code;
amounts excluded from gross income under ~~Sections-125--and~~ Section
46 129 of the Code; distributions from ROTH IRAs; the amount of
capital gains excluded from adjusted gross income; the absolute
48 value of the amount of trade or business loss, net operating loss
carry-over, capital loss, rental loss, farm loss, partnership or
50 S Corporation loss included in adjusted gross income; alimony;

2 inheritance; life insurance proceeds paid on death of insured;
3 nontaxable lawsuit rewards, such as slander, libel and pain and
4 suffering, excluding reimbursements such as medical and legal
5 expenses associated with the case; support money; nontaxable
6 strike benefits; the gross amount of any pension or annuity,
7 including railroad retirement benefits; all payments received
8 under the federal Social Security Act and state unemployment
9 insurance laws; veterans' disability pensions; nontaxable
10 interest received from the Federal Government or any of its
11 instrumentalities; interest or dividends on obligations or
12 securities of this State and its political subdivisions and
13 authorities; workers' compensation and the gross amount of "loss
14 of time" insurance; and cash public assistance and relief, but
15 not including relief granted under this chapter. "Income" does
16 not include the first \$5,000 ~~in--the~~ of proceeds from a life
17 insurance policy, whether paid in a lump sum or in the form of an
18 annuity. "Income" does not include a rollover from an individual
19 retirement account, pension or annuity fund or plan to an
20 individual retirement account, pension or annuity fund or plan
21 even if the amount of the rollover is includable in Maine
22 adjusted gross income. "Income" also does not include gifts from
23 nongovernmental sources or surplus foods or other relief in kind
24 supplied by a governmental agency.

25 **Sec. 18. 36 MRSA §6652, sub-§1**, as amended by PL 2005, c. 457,
26 Pt. BBB, §1, is further amended to read:

27 **1. Generally.** A person against whom taxes have been
28 assessed pursuant to Part 2, except for chapters 111 and 112,
29 with respect to eligible property and who has paid those taxes is
30 entitled to reimbursement of those taxes from the State as
31 provided in this chapter. The reimbursement under this chapter
32 is 100% of the taxes assessed and paid with respect to eligible
33 property, except that for claims filed for the application period
34 that begins on August 1, 2006 the reimbursement is 90% of the
35 taxes assessed and paid with respect to eligible property. For
36 purposes of this chapter, a tax applied as a credit against a tax
37 assessed pursuant to chapter 111 or 112 is a tax assessed
38 pursuant to chapter 111 or 112. Eligible property is subject to
39 reimbursement pursuant to this chapter for up to 12 property tax
40 years, but the 12 years must be reduced by one year for each year
41 during which a taxpayer included the same property in its
42 investment credit base under section 5219-D, 5219-E or 5219-M and
43 claimed the credit provided in one or more of those sections on
44 its income tax return, and reimbursement may not be made for
45 taxes assessed in a year in which one or more of those credits is
46 taken. A successor in interest of a person against whom taxes
47 have been assessed with respect to eligible property is entitled
48 to reimbursement pursuant to this section, whether the tax was
49 paid by the person assessed or by the successor, as long as a
50

2 transfer of the property in question to the successor has
3 occurred and the successor is the owner of the property as of
4 August 1st, of the year in which a claim for reimbursement may be
5 filed pursuant to section 6654. For purposes of this paragraph,
6 "successor in interest" includes the initial successor and any
7 subsequent successor. When an eligible successor in interest
8 exists, the successor is the only person to whom reimbursement
under this chapter may be made with respect to the transferred
property.

10 **Sec. 19. 36 MRSA §6656**, as amended by PL 2005, c. 12, Pt.
12 BBB, §4, is repealed and the following enacted in its place:

14 **§6656. Payment of claims**

16 **1. Reimbursement claim.** Notwithstanding any other
17 provision of law, except as provided in section 6652 and section
18 6662, upon receipt of a timely and properly completed claim for
19 reimbursement, the State Tax Assessor shall certify that the
20 claimant is eligible for reimbursement under this chapter. The
21 assessor shall determine the benefit for each claimant and shall
22 certify to the State Controller the amounts to be transferred to
23 the Business Equipment Tax Reimbursement reserve account
24 established, maintained and administered by the State Controller
25 from General Fund undedicated revenue within the individual
26 income tax category.

28 **2. Pay certified amounts.** The assessor shall pay the
29 certified amounts to each approved applicant that qualifies for
30 the benefit under this chapter by November 1st or within 90 days
31 after receipt of the claim, whichever is later. For those claims
32 for which payments are withheld pursuant to section 6652,
33 subsection 3, and with respect to which the assessor receives
34 notification under that subsection that the report has been
35 received, reimbursement must be paid by November 1st or within 90
36 days after the assessor receives the notification, whichever is
37 later. Interest is not allowed on any payment made to a claimant
38 pursuant to this chapter.

40 **Sec. 20. 38 MRSA §2201, last ¶**, as amended by PL 2001, c. 315,
41 §5, is further amended to read:

42
43 Funds related to administration may be expended only in
44 accordance with allocations approved by the Legislature for
45 administrative expenses directly related to the office's and the
46 department's programs, including actions by the department
47 necessary to abate threats to public health, safety and welfare
48 posed by the disposal of solid waste. Funds related to
49 operations may be expended only in accordance with allocations
50 approved by the Legislature and solely for the development and

2 operation of publicly owned facilities owned or approved by the
3 office and for the repayment of any obligations of the office
4 incurred under article 3. These allocations must be based on
5 estimates of the actual costs necessary for the office and the
6 department to administer their programs, to provide financial
7 assistance to regional associations and to provide other
8 financial assistance necessary to accomplish the purposes of this
9 chapter. Beginning in the fiscal year ending on June 30, 1991
10 and thereafter, the fund must annually transfer to the General
11 Fund an amount necessary to reimburse the costs of the Bureau of
12 ~~Taxation Revenue Services~~ incurred in the administration of Title
13 36, ~~section 5219-D~~ and Title 36, chapter 719. Allowable
14 expenditures include "Personal Services," "All Other" and
15 "Capital Expenditures" associated with all office activities
16 other than those included in the operations account.

17 **Sec. 21. Application.** That section of this Act that amends
18 the Maine Revised Statutes, Title 36, section 4064 applies to the
19 estates of decedents who die on or after January 1, 2005. That
20 section of this Act that amends Title 36, section 5200,
21 subsection 1 applies retroactively to tax years beginning on or
22 after January 1, 2005. Those sections of this Act that amend
23 Title 36, section 5203-C, subsection 1, paragraph D and
24 subsection 4, paragraph A apply retroactively to tax years
25 beginning on or after January 1, 2004. Those sections of this Act
26 that amend Title 36, section 5220, subsections 3 and 4 apply
27 retroactively to tax years beginning on or after January 1, 2003.
28 That section of this Act that amends Title 36, section 6201,
29 subsection 9 applies to claims for benefits under the Maine
30 Residents Property Tax Program filed for application periods that
31 begin on or after August 1, 2005. That section of this Act that
32 repeals and replaces Title 36, section 6656 applies to property
33 tax years beginning on or after April 1, 2004.

34 SUMMARY

35
36
37 **38** This bill makes the following changes to the laws governing
39 taxation.

40
41 It adds a definition of "manufactured housing" to the sales
42 and use tax law. The definition is the one that has been applied
43 administratively by the Department of Administrative and
44 Financial Services, Bureau of Revenue Services.

45
46 It eliminates a sales tax exemption that is not currently
47 being administered because the Office of the Attorney General has
48 advised the Bureau of Revenue Services that it violates the
49 commerce clause of the United States Constitution. The section
50 also clarifies an ambiguous cross-reference.

2 It replaces the imprecise phrase "mobile and modular homes"
with the defined term "manufactured housing."

4
6 It eliminates a superfluous cross-reference and eliminates
other redundant language.

8 It enacts various technical changes to clarify a statute
enacted in 2005 that altered the Maine income tax calculation for
10 multistate corporations.

12 It corrects an erroneous cross-reference.

14 It clarifies that the Pine Tree Development Zone tax credit
cannot be carried forward indefinitely to offset future income in
16 years beyond the Pine Tree Development Zone time period. This is
the interpretation currently being applied administratively by
18 the Bureau of Revenue Services.

20 It clarifies a cross-reference to the Internal Revenue Code.
The section referred to has been repealed.

22 It eliminates the solid waste reduction investment tax
24 credit, which is no longer available.

26 It corrects the name of the state agency that certifies
investments for the quality child care investment credit.

28 It clarifies that estates and trusts must file a Maine
30 income tax return if they owe Maine income tax, even if their
Maine taxable income is zero or less. This is the interpretation
32 currently being applied administratively by the Bureau of Revenue
Services.

34 It corrects a punctuation error, standardizes archaic
36 language and corrects cross-references.

38 It clarifies the definition of "income" for purposes of the
Maine Residents Property Tax Program.

40 It clarifies the procedure for payment of claims under the
42 Business Equipment Tax Reimbursement program.

44 It clarifies that Maine elective property owned by an estate
of a nonresident is subject to Maine estate tax.