# 122nd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2006

| **Legislative Document** | **No. 1761** |
|---|---|
| S.P. 678 | In Senate, December 30, 2005 |

**An Act To Offer Financial Institutions an Option for Payment of the Maine Franchise Tax**

Submitted by the Department of Economic and Community Development 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.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator PERRY of Penobscot.
Cosponsored by Representative: DUGAY of Cherryfield.

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

**Sec. 1. 36 MRSA §5206,** as amended by PL 1997, c. 746, §14 and affected by §24, is repealed and the following enacted in its place:

**§5206. Franchise tax on financial institutions**

A tax is imposed for each calendar year or fiscal year ending during that calendar year upon the franchise or privilege of doing business in this State of every financial institution that has Maine net income or Maine assets and that has a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution. A financial institution is subject to tax under this section even if it is treated as a partnership, S corporation or entity disregarded as separate from its owner for federal income tax purposes under the Code. Each financial institution shall determine the tax due using one of the following methods:

**1. Franchise tax on Maine net income.** The sum of:

A. One percent of the financial institution's Maine net income; and

B. Eight cents per $1,000 of the financial institution's Maine assets; or

**2. Franchise tax on Maine assets only.** Thirty-nine cents per $1,000 of the financial institution's Maine assets.

Each financial institution subject to the tax under this chapter shall elect to calculate and pay tax under the method in subsection 1 or 2. The financial institution shall make the election on its annual state tax return and the election cannot be revoked with respect to that tax year. If a financial institution fails to make an election, the method established in subsection 1 must be used and is deemed an election for purposes of this section.

In each taxable year in which a financial institution sustains a book net operating loss, a credit must be allowed against the franchise tax on assets under subsections 1 and 2. The credit must be computed by multiplying the book net operating loss by the applicable franchise tax rate imposed by subsection 1, paragraph A. The total amount of any credit allowed may not exceed the franchise tax on assets due under subsection 1, paragraph B. In any tax year in which there is excess credit, the excess credit must be carried forward for no more than the next 5 tax years and may be applied against the tax computed under subsection 1.

**Sec. 2. 36 MRSA §5206-E, first ¶,** as enacted by PL 1997, c. 404, §5 and affected by §10, is amended to read:

Except as otherwise specifically provided, a financial institution that is taxable both in and outside this State shall apportion its net income and end-of-year assets as provided in this section. A financial institution is considered taxable in a state if in that state the financial institution is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax or that state has jurisdiction to subject the financial institution to a net income tax regardless of whether, in fact, the state does or does not tax the financial institution.

**Sec. 3. 36 MRSA §5206-E, sub-§1,** as amended by PL 1997, c. 746, §18 and affected by §24, is further amended to read:

**1. Formula applicable.** All of a financial institution's ~~Maine~~ net income ~~is~~ and end-of-year assets are apportioned to this State by multiplying the income and the assets by a fraction, the numerator of which is the property factor plus the payroll factor plus 2 times the receipts factor and the denominator of which is 4.

**Sec. 4. 36 MRSA §5206-E, sub-§5, ¶D,** as enacted by PL 1997, c. 404, §5 and affected by §10, is amended to read:

D. The employment of any other method to effectuate an equitable apportionment of the taxpayer's income or assets.

**Sec. 5. Application.** This Act applies to tax years ending after December 31, 2005.

## SUMMARY

This bill provides an alternative tax calculation for purposes of the franchise tax for financial institutions based entirely on Maine assets. Current law determines the franchise tax on the basis of both Maine net income and Maine assets. The financial institution may choose either the current method or the alternative method for calculating the franchise tax. The method used is irrevocable for that tax year. The bill applies to tax years ending after December 31, 2005.