

MAINE STATE LEGISLATURE

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L.D. 2145

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Date: 4/4/8

Minority

(Filing No. H-942)

TAXATION

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1524, L.D. 2145, Bill, "An Act To
Conform the Maine Tax Laws for 2007 to the United States Internal Revenue Code"

Amend the bill by striking out the title and substituting the following:

**'An Act To Conform the Maine Tax Laws to the United States Internal
Revenue Code'**

Amend the bill by striking out everything after the enacting clause and before the
emergency clause and inserting the following:

'Sec. 1. 36 MRSA §5122, sub-§1, ¶N, as amended by PL 2007, c. 240, Pt. CCC,
§2 and affected by §4, is further amended to read:

N. With respect to property placed in service during the taxable year, an amount
equal to the net increase in depreciation or expensing attributable to:

(1) For taxable years beginning on or after January 1, 2002 but prior to January 1,
2006, a 30% bonus depreciation deduction claimed by the taxpayer pursuant to
Section 101 of the federal Job Creation and Worker Assistance Act of 2002,
Public Law 107-147 with respect to property placed in service during the taxable
year;

(2) For taxable years beginning on or after January 1, 2002 but prior to January 1,
2006, a 50% bonus depreciation deduction claimed by the taxpayer pursuant to
Section 201 of the federal Jobs and Growth Tax Relief Reconciliation Act of
2003, Public Law 108-27 with respect to property placed in service during the
taxable year; and

(3) For taxable years beginning on or after January 1, 2003 but before January 1,
2008, the increase in aggregate cost under Section 179 of the Code arising from
amendments to the Code applicable to tax years beginning on or after January 1,
2003;

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1 **Sec. 2. 36 MRSA §5122, sub-§1, ¶X**, as amended by PL 2007, c. 539, Pt. CCC,
2 §2, is further amended to read:

3 X. An amount equal to the taxpayer's federal deduction relating to income
4 attributable to domestic production activities claimed in accordance with Section 102
5 of the federal American Jobs Creation Act of 2004, Public Law 108-357; and

6 **Sec. 3. 36 MRSA §5122, sub-§1, ¶Y**, as amended by PL 2007, c. 539, Pt. CCC,
7 §3, is further amended to read:

8 Y. Any amount of allowable deduction claimed for federal purposes in accordance
9 with the election under Section 642(g) of the Code that is also used to determine the
10 taxable estate for purposes of calculating the Maine estate tax under chapter 575;

11 **Sec. 4. 36 MRSA §5122, sub-§1, ¶Z**, as enacted by PL 2007, c. 539, Pt. CCC,
12 §4, is repealed.

13 **Sec. 5. 36 MRSA §5122, sub-§1, ¶AA**, as enacted by PL 2007, c. 539, Pt. CCC,
14 §5, is repealed.

15 **Sec. 6. 36 MRSA §5122, sub-§2, ¶Y**, as amended by PL 2007, c. 539, Pt. CCC,
16 §6, is further amended to read:

17 Y. The portion of contributions to a qualified tuition program established under
18 Section 529 of the Code up to \$250 per designated beneficiary. This deduction may
19 not be claimed on returns when federal adjusted gross income exceeds \$100,000 for
20 returns with a filing status of single or married filing separately or \$200,000 for
21 returns with a filing status of married joint or head of household; and

22 **Sec. 7. 36 MRSA §5122, sub-§2, ¶Z**, as amended by PL 2007, c. 539, Pt. CCC,
23 §7, is further amended to read:

24 Z. For income tax years beginning on or after January 1, 2006, to the extent included
25 in federal adjusted gross income and not otherwise removed from Maine taxable
26 income, an amount equal to the total of capital gains and ordinary income resulting
27 from depreciation recapture determined in accordance with the Code, Sections 1245
28 and 1250 that is realized upon the sale of property certified as multifamily affordable
29 housing property by the Maine State Housing Authority in accordance with Title 30-
30 A, section 4722, subsection 1, paragraph AA; and

31 **Sec. 8. 36 MRSA §5122, sub-§2, ¶AA**, as enacted by PL 2007, c. 539, Pt. CCC,
32 §8, is repealed.

33 **Sec. 9. 36 MRSA §5125, sub-§3, ¶D**, as amended by PL 2007, c. 539, Pt. CCC,
34 §9, is further amended to read:

35 D. Reduced by any amount attributable to interest or expenses incurred in the
36 production of income exempt from tax under this Part; and

37 **Sec. 10. 36 MRSA §5125, sub-§3, ¶E**, as amended by PL 2007, c. 539, Pt. CCC,
38 §10, is further amended to read:

39 E. Reduced by the amount attributable to any contribution that qualified for and was
40 actually utilized as a credit under section 5216-C; and

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1 **Sec. 11. 36 MRSA §5125, sub-§3, ¶F**, as enacted by PL 2007, c. 539, Pt. CCC,
2 §11, is repealed.

3 **Sec. 12. 36 MRSA §5164, sub-§1**, as amended by PL 2007, c. 539, Pt. CCC, §12,
4 is further amended to read:

5 **1. Fiduciary adjustment defined.** The fiduciary adjustment is the net amount of the
6 modifications described in section 5122, including subsection 3 if the estate or trust is a
7 beneficiary of another estate or trust, which relates to items of income or deduction of an
8 estate or trust. Income taxes imposed by this State or any other taxing jurisdiction;
9 ~~mortgage insurance premiums paid or accrued on or after January 1, 2008 and claimed as~~
10 ~~a deduction pursuant to the Code, Section 163(h)(3)(E) and interest or expenses incurred~~
11 in the production of income exempt from tax under this Part deducted in arriving at
12 federal taxable income must be added back to the fiduciary adjustment. Interest or
13 expenses incurred in the production of income taxable under this Part but exempt from
14 federal income tax must be subtracted from the fiduciary adjustment.

15 **Sec. 13. 36 MRSA §5200-A, sub-§1, ¶N**, as amended by PL 2007, c. 240, Pt.
16 CCC, §3 and affected by §4, is further amended to read:

17 N. With respect to property placed in service during the taxable year, an amount
18 equal to the net increase in depreciation or expensing attributable to:

19 (1) For taxable years beginning on or after January 1, 2002 but prior to January 1,
20 2006, a 30% bonus depreciation deduction claimed by the taxpayer pursuant to
21 Section 101 of the federal Job Creation and Worker Assistance Act of 2002,
22 Public Law 107-147 with respect to property placed in service during the taxable
23 year;

24 (2) For taxable years beginning on or after January 1, 2002 but prior to January 1,
25 2006, a 50% bonus depreciation deduction claimed by the taxpayer pursuant to
26 Section 201 of the federal Jobs and Growth Tax Relief Reconciliation Act of
27 2003, Public Law 108-27 with respect to property placed in service during the
28 taxable year; and

29 (3) For taxable years beginning on or after January 1, 2003 but before January 1,
30 2008, the increase in aggregate cost under Section 179 of the Code arising from
31 amendments to the Code applicable to tax years beginning on or after January 1,
32 2003;

33 **Sec. 14. 36 MRSA §5200-A, sub-§1, ¶P**, as amended by PL 2007, c. 539, Pt.
34 CCC, §13, is further amended to read:

35 P. The amount of the loan repayment included in the credit base of the recruitment
36 credit under section 5219-V to the extent that the contribution has been used to adjust
37 federal taxable income; and

38 **Sec. 15. 36 MRSA §5200-A, sub-§1, ¶S**, as amended by PL 2007, c. 539, Pt.
39 CCC, §14, is further amended to read:

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1 S. An amount equal to the taxpayer's federal deduction relating to income
2 attributable to domestic production activities claimed in accordance with Section 102
3 of the federal American Jobs Creation Act of 2004, Public Law 108-357; ~~and~~.

4 **Sec. 16. 36 MRSA §5200-A, sub-§1, ¶T**, as enacted by PL 2007, c. 539, Pt.
5 CCC, §15, is repealed.

6 **Sec. 17. 36 MRSA §5200-A, sub-§2, ¶P**, as amended by PL 2007, c. 539, Pt.
7 CCC, §16, is further amended to read:

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

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

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

15 (b) "Eligible timberlands" means land of at least 10 acres located in
16 the State and used primarily for the growth of trees to be commercially
17 harvested. Land that would otherwise be included within this
18 definition may not be excluded because of:

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

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

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

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

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

33 (d) "Sustainably managed" means:

34 (i) A forest management and harvest plan, as defined in section
35 573, subsection 3-A, has been prepared for the eligible timberlands
36 and has been in effect for the entire time period used to compute

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- 1 the amount of the subtraction modification under this paragraph;
- 2 and
- 3 (ii) The taxpayer has received a written statement from a licensed
- 4 forester certifying that, as of the time of the sale, the eligible
- 5 timberlands have been managed in accordance with the plan under
- 6 subdivision (i) during that period.

- 7 (2) To the extent included in the taxpayer's taxable income under the laws
- 8 of the United States, the taxable income of the taxpayer under the laws of
- 9 the United States must be decreased by:
 - 10 (a) For eligible timberlands held by the taxpayer for at least a 10-year
 - 11 period beginning on or after January 1, 2005 but less than an 11-year
 - 12 period beginning on or after January 1, 2005, 1/15 of the gain
 - 13 recognized on the sale of the eligible timberlands;
 - 14 (b) For eligible timberlands held by the taxpayer for at least an 11-year
 - 15 period beginning on or after January 1, 2005 but less than a 12-year
 - 16 period beginning on or after January 1, 2005, 2/15 of the gain
 - 17 recognized on the sale of the eligible timberlands;
 - 18 (c) For eligible timberlands held by the taxpayer for at least a 12-year
 - 19 period beginning on or after January 1, 2005 but less than a 13-year
 - 20 period beginning on or after January 1, 2005, 1/5 of the gain
 - 21 recognized on the sale of the eligible timberlands;
 - 22 (d) For eligible timberlands held by the taxpayer for at least a 13-year
 - 23 period beginning on or after January 1, 2005 but less than a 14-year
 - 24 period beginning on or after January 1, 2005, 4/15 of the gain
 - 25 recognized on the sale of the eligible timberlands;
 - 26 (e) For eligible timberlands held by the taxpayer for at least a 14-year
 - 27 period beginning on or after January 1, 2005 but less than a 15-year
 - 28 period beginning on or after January 1, 2005, 1/3 of the gain
 - 29 recognized on the sale of the eligible timberlands;
 - 30 (f) For eligible timberlands held by the taxpayer for at least a 15-year
 - 31 period beginning on or after January 1, 2005 but less than a 16-year
 - 32 period beginning on or after January 1, 2005, 2/5 of the gain
 - 33 recognized on the sale of the eligible timberlands;
 - 34 (g) For eligible timberlands held by the taxpayer for at least a 16-year
 - 35 period beginning on or after January 1, 2005 but less than a 17-year
 - 36 period beginning on or after January 1, 2005, 7/15 of the gain
 - 37 recognized on the sale of the eligible timberlands;

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- 1 (h) For eligible timberlands held by the taxpayer for at least a 17-year
2 period beginning on or after January 1, 2005 but less than an 18-year
3 period beginning on or after January 1, 2005, 8/15 of the gain
4 recognized on the sale of the eligible timberlands;
- 5 (i) For eligible timberlands held by the taxpayer for at least an 18-year
6 period beginning on or after January 1, 2005 but less than a 19-year
7 period beginning on or after January 1, 2005, 3/5 of the gain
8 recognized on the sale of the eligible timberlands;
- 9 (j) For eligible timberlands held by the taxpayer for at least a 19-year
10 period beginning on or after January 1, 2005 but less than a 20-year
11 period beginning on or after January 1, 2005, 2/3 of the gain
12 recognized on the sale of the eligible timberlands;
- 13 (k) For eligible timberlands held by the taxpayer for at least a 20-year
14 period beginning on or after January 1, 2005 but less than a 21-year
15 period beginning on or after January 1, 2005, 11/15 of the gain
16 recognized on the sale of the eligible timberlands;
- 17 (l) For eligible timberlands held by the taxpayer for at least a 21-year
18 period beginning on or after January 1, 2005 but less than a 22-year
19 period beginning on or after January 1, 2005, 4/5 of the gain
20 recognized on the sale of the eligible timberlands;
- 21 (m) For eligible timberlands held by the taxpayer for at least a 22-year
22 period beginning on or after January 1, 2005 but less than a 23-year
23 period beginning on or after January 1, 2005, 13/15 of the gain
24 recognized on the sale of the eligible timberlands;
- 25 (n) For eligible timberlands held by the taxpayer for at least a 23-year
26 period beginning on or after January 1, 2005 but less than a 24-year
27 period beginning on or after January 1, 2005, 14/15 of the gain
28 recognized on the sale of the eligible timberlands; or
- 29 (o) For eligible timberlands held by the taxpayer for at least a 24-year
30 period beginning on or after January 1, 2005, all of the gain recognized
31 on the sale of the eligible timberlands.
- 32 (3) Taxpayers claiming this credit must attach a sworn statement from a forester
33 licensed pursuant to Title 32, chapter 76 that the timberlands for which the credit
34 is claimed have been managed sustainably. For the purposes of this
35 subparagraph, "sustainably" means that the timberlands for which the credit is
36 claimed have been managed to protect soil productivity and to maintain or
37 improve stand productivity and timber quality; known occurrences of threatened
38 or endangered species and rare or exemplary natural communities; significant
39 wildlife habitat and essential wildlife habitat; and water quality, wetlands and
40 riparian zones. Upon request of the State Tax Assessor, the Director of the Bureau

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1 of Forestry within the Department of Conservation may provide assistance in
2 determining whether timberlands for which the credit is claimed have been
3 managed sustainably. When assistance is requested under this subparagraph, the
4 director or the director's designee may enter and examine the timberlands for the
5 purpose of determining whether the timberlands have been managed sustainably.

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

14 This modification may not reduce Maine taxable income to less than zero. To the
15 extent this modification results in Maine taxable income that is less than zero for the
16 taxable year, the excess negative modification amount may be carried forward and
17 applied as a subtraction modification for up to 10 taxable years. The entire amount of
18 the excess negative modification must be carried to the earliest of the taxable years to
19 which, by reason of this subsection, the negative modification may be carried and
20 then to each of the other taxable years to the extent the unused negative modification
21 is not used for a prior taxable year. Earlier carry-forward modifications must be used
22 before newer modifications generated in later years; and

23 **Sec. 18. 36 MRSA §5200-A, sub-§2, ¶Q**, as amended by PL 2007, c. 539, Pt.
24 CCC, §17, is further amended to read:

25 Q. For income tax years beginning on or after January 1, 2006, to the extent included
26 in federal taxable income and not otherwise removed from Maine taxable income, an
27 amount equal to the total of capital gains and ordinary income resulting from
28 depreciation recapture determined in accordance with the Code, Sections 1245 and
29 1250 that is realized upon the sale of property certified as multifamily affordable
30 housing property by the Maine State Housing Authority in accordance with Title 30-
31 A, section 4722, subsection 1, paragraph AA; and.

32 **Sec. 19. 36 MRSA §5200-A, sub-§2, ¶R**, as enacted by PL 2007, c. 539, Pt.
33 CCC, §18, is repealed.

34 **Sec. 20. Application.** This Act applies to tax years beginning on or after January
35 1, 2007 and to any prior years as specifically provided by the United States Internal
36 Revenue Code of 1986 except that those sections that amend the Maine Revised Statutes,
37 Title 36, section 5122, subsection 1, paragraph N and section 5200-A, subsection 1,
38 paragraph N apply to tax years beginning on or after January 1, 2008.'

39 **SUMMARY**

40 This amendment provides for full conformity with the United States Internal Revenue
41 Code through February 13, 2008 and includes provisions relating to the expensing of
42 business equipment under Section 179 of the Code.

FISCAL NOTE REQUIRED
(See attached)

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123rd MAINE LEGISLATURE

LD 2145

LR 3081(02)

An Act To Conform the Maine Tax Laws for 2007 to the United States Internal Revenue Code

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Taxation

Fiscal Note Required: Yes

Fiscal Note

	2007-08	2008-09	Projections 2009-10	Projections 2010-11
Net Cost (Savings)				
General Fund	\$2,434,723	\$32,423,944	(\$1,163,592)	(\$7,851,500)
Revenue				
General Fund	(\$2,434,723)	(\$32,423,944)	\$1,163,592	\$7,851,500
Other Special Revenue Funds	(\$130,844)	(\$1,742,488)	\$63,825	\$430,673

Fiscal Detail and Notes

The General Fund revenue loss associated with conforming to the United States Internal Revenue Code as of February 13, 2008 is estimated to be \$2,434,723 in fiscal year 2007-08 and \$32,423,944 in fiscal year 2008-09.