

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

SECOND REGULAR SESSION-2008

Legislative Document

No. 2151

H.P. 1531

House of Representatives, January 15, 2008

An Act To Make Minor Substantive Changes to the Tax Laws

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 PIOTTI of Unity.
Cosponsored by Senator PERRY of Penobscot.

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

2 **Sec. 1. 30-A MRSA §5223, sub-§3,** as amended by PL 2007, c. 413, §3, is
3 further amended to read:

4 **3. Conditions for approval.** Designation of a development district is subject to the
5 following conditions.

6 A. At least 25%, by area, of the real property within a development district must
7 meet at least one of the following criteria:

8 (1) Must be a blighted area;

9 (2) Must be in need of rehabilitation, redevelopment or conservation work; or

10 (3) Must be suitable for commercial or arts district uses.

11 B. The total area of a single development district may not exceed 2% of the total
12 acreage of the municipality. The total area of all development districts may not
13 exceed 5% of the total acreage of the municipality.

14 C. The original assessed value of a proposed tax increment financing district plus
15 the original assessed value of all existing tax increment financing districts within the
16 municipality may not exceed 5% of the total value of taxable property within the
17 municipality as of April 1st preceding the date of the commissioner's approval of the
18 designation of the proposed tax increment financing district.

19 Excluded from the calculation in this paragraph is any district excluded from the
20 calculation under former section 5253, subsection 1, paragraph C and any district
21 designated on or after the effective date of this chapter that meets the following
22 criteria:

23 (1) The development program contains project costs, authorized by section
24 5225, subsection 1, paragraph A, that exceed \$10,000,000;

25 (2) The geographic area consists entirely of contiguous property owned by a
26 single taxpayer;

27 (3) The assessed value exceeds 10% of the total value of taxable property within
28 the municipality; and

29 (4) The development program does not contain project costs authorized by
30 section 5225, subsection 1, paragraph C.

31 For the purpose of this paragraph, "contiguous property" includes a parcel or parcels
32 of land divided by a road, power line or right-of-way.

33 D. The aggregate value of municipal general obligation indebtedness financed by
34 the proceeds from tax increment financing districts within any county may not exceed
35 \$50,000,000 adjusted by a factor equal to the percentage change in the United States
36 Bureau of Labor Statistics Consumer Price Index, United States City Average from
37 January 1, 1996 to the date of calculation.

38 (1) The commissioner may adopt rules necessary to allocate or apportion the
39 designation of captured assessed value of property within proposed tax increment

1 financing districts to permit compliance with the condition in this paragraph.
2 Rules adopted pursuant to this paragraph are routine technical rules as defined in
3 Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

4 (2) The acquisition, construction and installment of all real and personal
5 property improvements, buildings, structures, fixtures and equipment included
6 within the development program and financed through municipal bonded
7 indebtedness must be completed within 5 years of the commissioner's approval of
8 the designation of the tax increment financing district.

9 The conditions in paragraphs A to D do not apply to approved downtown tax increment
10 financing districts, tax increment financing districts included within Pine Tree
11 Development Zones designated and approved under subchapter 3 or tax increment
12 financing districts that consist solely of one or more community wind power generation
13 facilities owned by a community wind power generator or generators that has been
14 certified by the Public Utilities Commission pursuant to Title 36 35-A, section 5219-AA
15 3403, subsection 3.

16 **Sec. 2. 35-A MRSA §3402**, as amended by PL 2005, c. 646, §3, is further
17 amended to read:

18 **§3402. Legislative findings**

19 The Legislature finds that it is in the public interest to explore opportunities for and
20 encourage the development, where appropriate, of wind energy production in the State in
21 a manner that is consistent with all state and federal environmental standards and that
22 achieves reliable, cost-effective, sustainable energy production on those sites in the State
23 that will attract investment and permit the development of viable wind energy projects.
24 The Legislature finds that the development of the wind energy potential in the State needs
25 to be integrated into the existing energy supply and transmission systems in a way that
26 achieves system reliability, total capital cost-effectiveness and optimum short-term and
27 long-term benefits to Maine people. The Legislature finds it is in the public interest to
28 encourage the construction and operation of community wind power ~~generator projects~~
29 generation facilities in the State. For the purposes of this ~~section~~ chapter, "community
30 wind power generator generation facility" means an electricity-generating facility at any
31 one site with instantaneous generating nameplate capacity of not more than 10 megawatts
32 that is powered entirely by wind energy. The Legislature also finds it is in the public
33 interest to encourage wind energy research and the development of wind generation
34 equipment manufacturing facilities in the State.

35 **Sec. 3. 35-A MRSA §3403, sub-§3** is enacted to read:

36 **3. Certification.** The commission may certify a person as a community wind power
37 generator if the commission determines that such a certification would support
38 construction of a community wind power generation facility in this State and that the
39 person will be the owner of that facility. The person must demonstrate to the commission
40 that the construction of the community wind power generation facility would not be
41 likely to occur absent the availability of the benefits under Title 36, section 1760,
42 subsection 89 and Title 36, sections 2017 and 5219-BB. The commission may not certify
43 a person as a community wind power generator with respect to a community wind power

1 generation facility for which the person commenced the site permit application process
2 prior to August 23, 2006.

3 **Sec. 4. 36 MRSA §112, sub-§4-A** is enacted to read:

4 **4-A. Sampling.** The assessor may use a generally recognized statistical sampling or
5 other sampling technique in examining the records of a taxpayer when the assessor finds
6 that:

7 A. The taxpayer's records are inadequate or insufficient, so that performing a
8 comprehensive audit for the period or periods in question is not possible;

9 B. The taxpayer's records are substantially complete, but are so detailed, complex or
10 voluminous that performing an audit of every individual transaction documented in
11 those records would be impractical or unreasonable; or

12 C. The cost to the taxpayer or the State of conducting a comprehensive audit of the
13 taxpayer's records would be unreasonable.

14 The assessor and the taxpayer shall make a good faith effort to reach agreement as to the
15 means and methods to be used in any audit that entails sampling. The failure to reach
16 agreement with the taxpayer does not preclude the assessor from using any sampling
17 technique in the audit that the assessor considers appropriate under the circumstances, as
18 long as the assessor provides the taxpayer with a written description of the technique or
19 techniques to be used prior to conducting the audit.

20 **Sec. 5. 36 MRSA §187-B, sub-§6,** as enacted by PL 1991, c. 873, §5 and
21 affected by §§8 and 9, is amended to read:

22 **6. Penalties not exclusive.** Each penalty provided by under this section is in
23 addition to any interest and other penalties provided by under this section and other law,
24 except as otherwise provided in this section, ~~and interest.~~ Interest may not accrue on the
25 penalty. This section does not apply to any filing or payment responsibility pursuant to
26 Part 2 except that this section does apply to a filing or payment responsibility pursuant to
27 the state tax on telecommunications personal property imposed under section 457. The
28 penalties imposed by under subsections 1 and 2 accrue automatically, without being
29 assessed by the State Tax Assessor, ~~and each.~~ Each penalty imposed by under this
30 section is recoverable by the ~~State Tax Assessor~~ assessor in the same manner as if it were
31 a tax assessed under this Title.

32 **Sec. 6. 36 MRSA §191, sub-§2, ¶II,** as amended by PL 2007, c. 328, §3, is
33 further amended to read:

34 **II.** The disclosure to an authorized representative of the Maine Milk Commission of
35 information on the quantity of packaged milk handled in the State and subject to the
36 milk handling fee established in section 4902 and other information obtained by the
37 assessor in the administration of chapter 721; ~~and~~

38 **Sec. 7. 36 MRSA §191, sub-§2, ¶JJ,** as enacted by PL 2007, c. 328, §4, is
39 amended to read:

1 JJ. The disclosure to the State Purchasing Agent of a person's sales tax standing as
2 necessary to enforce Title 5, section 1825-B, subsection 14-; and

3 **Sec. 8. 36 MRSA §191, sub-§2, ¶KK** is enacted to read:

4 KK. The disclosure to an authorized representative of the Department of Economic
5 and Community Development of information required for the administration of the
6 media production credit under section 5219-Y, the employment tax increment
7 financing program under chapter 917, the media production reimbursement program
8 under chapter 919-A or the Pine Tree Development Zone program under Title 30-A,
9 chapter 206, subchapter 4.

10 **Sec. 9. 36 MRSA §193, sub-§2, ¶B**, as amended by PL 2007, c. 437, §6, is
11 further amended to read:

12 B. Unless otherwise provided by a rule adopted pursuant to this subsection, in the
13 case of a payroll processor as defined in Title 10, chapter 222 that submits returns
14 pursuant to section 5253 or Title 26, chapter 13, subchapter 5 or 7 for 100 or more
15 employers, the assessor may require that the returns be filed by electronic data
16 submission.

17 **Sec. 10. 36 MRSA §193, sub-§3**, as amended by PL 2007, c. 437, §6, is further
18 amended to read:

19 **3. Payment by electronic funds transfer.** The State Tax Assessor, with the
20 approval of the Commissioner of Administrative and Financial Services, may adopt a rule
21 allowing or requiring the payment of a tax or the refund of a tax by electronic funds
22 transfer. An electronic funds transfer allowed or required by the assessor pursuant to this
23 subsection in payment of a tax obligation to the State is considered a return. For the
24 purposes of this subsection, "tax" includes Competitive Skills Scholarship Fund
25 contributions and unemployment insurance contributions required to be paid to the State
26 pursuant to Title 26.

27 A. Unless otherwise provided by a rule adopted pursuant to this subsection, in the
28 case of a person that is liable for \$200,000 or more per year pursuant to section 5253
29 or for \$400,000 or more per year in payments of any other single tax type, the
30 assessor may require payment or refund of that tax by electronic funds transfer.

31 B. Unless otherwise provided by a rule adopted pursuant to this subsection, in the
32 case of a payroll processor as defined in Title 10, chapter 222, the assessor may
33 require payment or refund of taxes pursuant to section 5253 and payment or refund of
34 Competitive Skills Scholarship Fund contributions and unemployment insurance
35 contributions pursuant to Title 26, chapter 13, subchapter subchapters 5 and 7,
36 respectively, by electronic funds transfer.

37 **Sec. 11. 36 MRSA §457**, as amended by PL 2001, c. 559, Pt. H, §1, is further
38 amended to read:

1 **§457. State tax on telecommunications personal property**

2 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
3 following terms have the following meanings.

4 A. "Telecommunications business" means a person engaged in the activity of
5 providing interactive 2-way communication services for compensation.

6 B. "Telecommunications personal property" means personal property used for the
7 transmission of any interactive 2-way communications, including voice, image, data
8 and information. ~~Transmission of communications includes the use of any, via a~~
9 medium such as wires, cables, ~~community antenna television or other broad band~~
10 ~~cables,~~ microwaves, radio waves, light waves or any combination of those or similar
11 media. "Telecommunications personal property" includes qualifying property used to
12 provide telegraph service. "Telecommunications personal property" does not include
13 property used solely to provide value-added nonvoice services in which computer
14 processing applications are used to act on the form, content, code and protocol of the
15 information to be transmitted, unless those services are provided under a tariff
16 approved by the Public Utilities Commission. "Telecommunications personal
17 property" does not include single or multiline standard telephone instruments.
18 Notwithstanding section 551, "telecommunications personal property" includes any
19 interest of a telecommunications business in poles.

20 **2. Tax imposed.** A state tax is imposed on telecommunications personal property at
21 the rate of ~~27 mills provided in this subsection~~ times the just value of the property ~~for~~
22 ~~assessments made before December 31, 2003.~~ Just value and ownership of the property
23 must be determined as of the April 1st preceding the assessment. ~~For assessments made~~
24 ~~after December 31, 2003, the~~ The rate of tax is:

- 25 A. For assessments made in 2004, 26 mills;
26 B. For assessments made in 2005, 25 mills;
27 C. For assessments made in 2006, 24 mills;
28 D. For assessments made in 2007, 23 mills;
29 E. For assessments made in 2008, 22 mills;
30 F. For assessments made in 2009, 21 mills; and
31 G. For assessments made in 2010 and subsequent years, 20 mills.

32 **3-A. Returns to State Tax Assessor.** Each telecommunications business owning or
33 leasing telecommunications personal property that on the first day of April in any year is
34 situated, whether permanently or temporarily, within this State shall, on or before the
35 20th day of April in that year, return to the State Tax Assessor a complete list of such
36 property on a form to be furnished by the State Tax Assessor.

37 **4. Assessment.** The State Tax Assessor shall assess a tax on telecommunications
38 personal property owned or leased by a telecommunications business.
39 Telecommunications personal property owned or leased by a person ~~who~~ that is not a
40 telecommunications business must be assessed a tax by the municipal assessor in the

1 municipality in which the property is located on April 1st of the taxable year. The date of
2 assessment of telecommunications personal property by municipalities must be consistent
3 with other property subject to property taxation by the municipalities.

4 **5-B. Procedure.** The tax on telecommunications personal property of a
5 telecommunications business must be assessed and paid in accordance with this
6 subsection.

7 A. The State Tax Assessor shall make the assessment by May 30th of each year.

8 ~~B. For the 1999 tax year, a payment must be made no later than August 15, 1999~~
9 ~~equal to the amount by which the 1999 gross tax assessment exceeds the estimated~~
10 ~~tax paid for that tax year.~~

11 ~~C. For tax years subsequent to 1999, the~~ The tax assessment must be paid no later
12 than the August 15th following the date of assessment.

13 ~~D. The estimated prepayment made for the 2000 tax year must be applied to the~~
14 ~~1999 gross tax assessment that must be made by August 15, 1999.~~

15 **7. Collection.** Taxes assessed under this section by the State Tax Assessor must be
16 enforced as generally provided by this Title. Taxes assessed under this section by
17 municipal assessors must be enforced in the same way as other locally assessed personal
18 property taxes.

19 ~~**8. Penalty.** Underpayment of the tax imposed by this section and the prepayment of~~
20 ~~estimated tax required by this section are subject to the penalties imposed by section 187-~~
21 ~~B.~~

22 **Sec. 12. 36 MRSA §1487, sub-§2,** as amended by PL 1995, c. 29, §1, is further
23 amended to read:

24 **2. State Tax Assessor.** ~~In the unorganized territory, the~~ The State Tax Assessor
25 shall appoint agents to collect the excise tax in the unorganized territory. Agents,
26 including municipalities designated as agents, are allowed a fee of \$4 for each tax receipt
27 issued. The State Tax Assessor may authorize the offset of credit card fees incurred in
28 the collection of the excise taxes against the receipts from those collections. Agents shall
29 deposit the remainder on or before the 20th day of each month following receipt with the
30 Treasurer of State. The Treasurer of State shall make quarterly payments to each county
31 in an amount that is equal to the receipts for that period from each county. Those
32 payments must be made at the same time as payments under section 1606. County
33 receipts under this section must be deposited in the county's unorganized territory fund.

34 **Sec. 13. 36 MRSA §1752, sub-§11,** as amended by PL 2007, c. 410, §1 and
35 affected by §6 and amended by c. 437, §10, is further amended to read:

36 **11. Retail sale.** "Retail sale" means any sale of tangible personal property or a
37 taxable service in the ordinary course of business ~~for any purpose other than for resale,~~
38 ~~except resale as a casual sale, in the form of tangible personal property.~~ "Retail sale" also
39 ~~means any sale of a taxable service in the ordinary course of business for any purpose~~
40 ~~other than for resale, except resale as a casual sale.~~

- 1 A. "Retail sale" includes:
- 2 (1) Conditional sales, installment lease sales and any other transfer of tangible
- 3 personal property when the title is retained as security for the payment of the
- 4 purchase price and is intended to be transferred later;
- 5 (2) Sale of products for internal human consumption to a person for resale
- 6 through vending machines when sold to a person more than 50% of whose gross
- 7 receipts from the retail sale of tangible personal property are derived from sales
- 8 through vending machines. The tax must be paid by the retailer to the State;
- 9 (3) A sale in the ordinary course of business by a retailer to a purchaser who is
- 10 not engaged in selling that kind of tangible personal property or taxable service in
- 11 the ordinary course of repeated and successive transactions of like character; and
- 12 (4) The sale or liquidation of a business or the sale of substantially all of the
- 13 assets of a business, to the extent that the seller purchased the assets of the
- 14 business for resale, lease or rental in the ordinary course of business, except
- 15 when:
- 16 (a) The sale is to an affiliated entity and the transferee, or ultimate transferee
- 17 in a series of transactions among affiliated entities, purchases the assets for
- 18 resale, lease or rental in the ordinary course of business; or
- 19 (b) The sale is to a person that purchases the assets for resale, lease or rental
- 20 in the ordinary course of business or that purchases the assets for transfer to
- 21 an affiliate, directly or through a series of transactions among affiliated
- 22 entities, for resale, lease or rental by the affiliate in the ordinary course of
- 23 business.
- 24 For purposes of this subparagraph, "affiliate" or "affiliated" includes both direct
- 25 and indirect affiliates.
- 26 B. "Retail sale" does not include:
- 27 (1) Any casual sale;
- 28 (2) Any sale by a personal representative in the settlement of an estate, unless
- 29 the sale is made through a retailer, or unless the sale is made in the continuation
- 30 or operation of a business;
- 31 (3) The sale, to a person engaged in the business of renting automobiles, of
- 32 automobiles, integral parts of automobiles or accessories to automobiles, for
- 33 rental or for use in an automobile rented on a short-term basis;
- 34 (4) The sale, to a person engaged in the business of renting video media and
- 35 video equipment, of video media or video equipment for rental;
- 36 (5) The sale, to a person engaged in the business of renting or leasing
- 37 automobiles, of automobiles for rental or lease for one year or more;
- 38 (6) The sale, to a person engaged in the business of providing cable or satellite
- 39 television services, of associated equipment for rental or lease to subscribers in
- 40 conjunction with a sale of extended cable or extended satellite television services;

1 (7) The sale, to a person engaged in the business of renting furniture, or audio
2 media and audio equipment, of furniture, audio media or audio equipment for
3 rental pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-
4 105; or

5 (8) The sale of loaner vehicles to a new vehicle dealer licensed as such pursuant
6 to Title 29-A, section 953. ~~For purposes of this subparagraph, "loaner vehicle"~~
7 ~~means an automobile to be provided to the dealer's service customers for short-~~
8 ~~term use free of charge pursuant to the dealer's franchise, as defined in Title 10,~~
9 ~~section 1171, subsection 6.~~

10 (9) The sale of automobile repair parts used in the performance of repair services
11 on an automobile pursuant to an extended service contract sold on or after
12 September 20, 2007 that entitles the purchaser to specific benefits in the service
13 of the automobile for a specific duration;

14 (10) The sale, to a retailer that has been issued a resale certificate pursuant to
15 section 1754-B, subsection 2-B or 2-C, of tangible personal property for resale in
16 the form of tangible personal property, except resale as a casual sale;

17 (11) The sale, to a retailer that has been issued a resale certificate pursuant to
18 section 1754-B, subsection 2-B or 2-C, of a taxable service for resale, except
19 resale as a casual sale;

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

23 (13) The sale, to a retailer that is not required to register under section 1754-B,
24 of a taxable service for resale outside the State, except resale as a casual sale.

25 **Sec. 14. 36 MRSA §1760, sub-§89**, as enacted by PL 2005, c. 646, §5, is
26 amended to read:

27 **89. Sales of tangible personal property to qualified community wind power**
28 **generators.** Beginning October 1, 2006, sales of tangible personal property to a qualified
29 community wind power generator, as defined in section 5219-AA 2017, subsection 1,
30 paragraph B, for use directly and primarily in the generation of electricity ~~by that~~ in this
31 State at a community wind power generator generation facility, as defined in section
32 2017, subsection 1, paragraph A-1. The exemption provided by this subsection is limited
33 ~~for each qualified community wind power generator~~ to sales occurring on or before
34 December 31, 2011.

35 **Sec. 15. 36 MRSA §1763** is amended to read:

36 **§1763. Presumptions**

37 The burden of proving that a transaction was not taxable ~~shall be upon~~ is on the
38 person charged with tax liability. The presumption that a sale was not for resale may be
39 overcome during an audit or upon reconsideration if the seller proves that the purchaser
40 was the holder of a currently valid resale certificate as provided in section 1754-B at the

1 time of the sale and that the property purchased was purchased for resale by the purchaser
2 in the ordinary course of business.

3 **Sec. 16. 36 MRSA §2017, sub-§1, ¶A-1** is enacted to read:

4 A-1. "Community wind power generation facility" means an electricity-generating
5 facility at any one site with an instantaneous generating nameplate capacity of not
6 more than 10 megawatts that is powered entirely by wind energy.

7 **Sec. 17. 36 MRSA §2017, sub-§1, ¶B**, as enacted by PL 2005, c. 646, §6, is
8 amended to read:

9 B. "Qualified community wind power generator" ~~has the meaning given to it in~~
10 ~~section 5219-AA~~ means a person that has been certified as a community wind power
11 generator by the Public Utilities Commission pursuant to Title 35-A, section 3403,
12 subsection 3.

13 **Sec. 18. 36 MRSA §2017, sub-§2**, as enacted by PL 2005, c. 646, §6, is amended
14 to read:

15 **2. Reimbursement allowed.** A reimbursement is allowed as provided in this section
16 for a tax paid pursuant to this Part with respect to the sale or use of tangible personal
17 property that is physically incorporated in and becomes a permanent part of real property
18 that is owned by or sold to a qualified community wind power generator and that is used
19 directly and primarily ~~by the qualified community wind power generator in the generation~~
20 of electricity at a community wind power generation facility in this State.

21 **Sec. 19. 36 MRSA §2017, sub-§3**, as enacted by PL 2005, c. 646, §6, is amended
22 to read:

23 **3. Claim for reimbursement.** Claims under this section for reimbursement of taxes
24 are controlled by this subsection.

25 A. A claim for reimbursement under this section must be filed by the contractor or
26 subcontractor with the State Tax Assessor within 3 years from the date on which the
27 tangible personal property was incorporated into real property. The reimbursement
28 claim must be submitted on a form prescribed by the assessor and must be
29 accompanied by a statement from a qualified community wind power generator
30 certifying, under penalties of perjury, that the personal property with respect to which
31 the tax was paid by the claimant has been placed in use directly and primarily ~~by the~~
32 qualified in the generation of electricity in this State at a community wind power
33 generator generation facility. All records pertaining to such certification and to the
34 transactions in question must be retained for at least 6 years by the contractor or
35 subcontractor, by the qualified community wind power generator and by the person,
36 if any, that sold the real property in question to ~~that business~~ the qualified community
37 wind power generator. The reimbursement claim must be accompanied by such
38 additional information as the assessor may require. If a sales or use tax is included in
39 the contractor's or subcontractor's contract price, the contractor or subcontractor shall
40 file, at the request of the qualified community wind power generator, a claim for

1 reimbursement in accordance with this section and pay the reimbursement to the
2 qualified community wind power generator.

3 B. If, by agreement between the contractor or subcontractor and the qualified
4 community wind power generator, the contractor or subcontractor assigns its right to
5 claim and receive reimbursement, the qualified community wind power generator
6 must file a claim for reimbursement in accordance with this subsection.
7 Reimbursement may not be issued to a qualified community wind power generator
8 under this paragraph unless the contractor or subcontractor has previously submitted
9 to the ~~bureau~~ assessor a certificate, signed by the contractor or subcontractor,
10 releasing the contractor's or subcontractor's claim to the reimbursement. The
11 certificate must be in a format prescribed by the ~~State Tax Assessor~~ assessor.

12 **Sec. 20. 36 MRSA §2017, sub-§4, ¶A**, as enacted by PL 2005, c. 646, §6, is
13 amended to read:

14 A. Reimbursements made by the State Tax Assessor pursuant to this section are
15 limited to taxes paid in connection with sales of tangible personal property that occur
16 within a period of 5 years from the date the qualified community wind power
17 generator receiving the property is certified pursuant to ~~section 5219-AA~~ Title 35-A,
18 section 3403, subsection 3 or by December 31, 2011, whichever occurs first.

19 **Sec. 21. 36 MRSA §2903, sub-§3**, as amended by PL 2007, c. 407, §1, is further
20 amended to read:

21 **3. Legal incidence of tax.** Internal combustion engine fuel may be taxed only once
22 under this section. The tax imposed by this section is declared to be a levy and
23 assessment on the ultimate consumer, and other persons levied and assessed pursuant to
24 this chapter are agents of the State for the collection of the tax. The distributor that first
25 receives the fuel in this State is primarily responsible for paying the tax except when the
26 fuel is sold and delivered to a licensed exporter wholly for exportation from the State or
27 to another licensed distributor in the State, in which case the purchasing distributor is
28 primarily responsible for paying the tax. If a distributor includes the tax on a bill to a
29 customer, it must be shown as a separate line item and identified as "Maine gasoline tax."

30 **Sec. 22. 36 MRSA §3203, sub-§2**, as amended by PL 1999, c. 733, §5 and
31 affected by §17, is further amended to read:

32 **2. Legal incidence of tax.** Special fuel may be taxed only once under this section.
33 The tax imposed by this section is declared to be a levy and assessment on the ultimate
34 consumer, and other persons levied and assessed pursuant to this chapter are agents of the
35 State for the collection of the tax. The supplier and retailer are primarily responsible for
36 paying the tax. When a supplier sells and delivers to a licensed exporter wholly for
37 exportation from the State or to another supplier in the State, the purchasing supplier is
38 primarily responsible for paying the tax. If a supplier or retailer includes the tax on a bill
39 to a customer, it must be shown as a separate line item and identified as "Maine special
40 fuel tax."

41 **Sec. 23. 36 MRSA §4062, sub-§2**, as amended by PL 2003, c. 673, Pt. D, §2, is
42 further amended to read:

1 **2. Federal gross estate.** "Federal gross estate" means the gross estate of a decedent
2 as determined ~~for the purpose of the federal estate tax under~~ by the assessor in accordance
3 with the Code.

4 **Sec. 24. 36 MRSA §4062, sub-§8,** as enacted by PL 2005, c. 622, §17 and
5 affected by §33, is repealed.

6 **Sec. 25. 36 MRSA §4062, sub-§8-A** is enacted to read:

7 **8-A. Value.** When determining value for purposes of this chapter, "value" means,
8 with respect to an estate or to property included in an estate, including Maine qualified
9 terminable interest property, the value as determined by the assessor in accordance with
10 the Code.

11 **Sec. 26. 36 MRSA §4063,** as repealed and replaced by PL 2005, c. 622, §18, is
12 amended to read:

13 **§4063. Tax on estate of resident**

14 A tax is imposed upon the transfer of the estate of every person who dies on or after
15 January 1, 2002 and who, at the time of death, was a resident of this State. The amount
16 of this tax is equal to the federal credit multiplied by a fraction, the numerator of which is
17 the value of that portion of the decedent's federal gross estate that consists of real and
18 tangible personal property located in the State plus the value of all intangible personal
19 property and the denominator of which is the value of the decedent's federal gross estate.
20 ~~For purposes of this section, "federal gross estate" means the decedent's federal gross~~
21 ~~estate as modified by Maine qualified terminable interest property and Maine elective~~
22 ~~property.~~

23 A credit against the tax imposed by this section is allowed for all constitutionally
24 valid estate, inheritance, legacy and succession taxes actually paid to another jurisdiction
25 upon the value of real or tangible personal property owned by the decedent or subject to
26 those taxes as a part of or in connection with the estate and located in that jurisdiction if
27 the value of that property is also included in the value of the decedent's intangible
28 personal property subject to taxation under this section. The credit provided by this
29 section may not exceed the amount of tax otherwise due multiplied by a fraction, the
30 numerator of which is the value of the property located in the other taxing jurisdiction
31 subject to this credit on which tax was actually paid and the denominator of which is the
32 value of the decedent's federal gross estate. For purposes of this section, "another
33 jurisdiction" means another state, the District of Columbia, a possession or territory of the
34 United States or any political subdivision of a foreign country that is analogous to a state.

35 For purposes of this section, "federal gross estate" means the decedent's federal gross
36 estate as modified by Maine qualified terminable interest property and Maine elective
37 property.

38 **Sec. 27. 36 MRSA §4071,** as amended by PL 2005, c. 622, §§22 and 23 and
39 affected by §33, is repealed.

1 **Sec. 28. 36 MRSA §4075**, as enacted by PL 1981, c. 451, §7, is amended to read:

2 **§4075. Amount of tax determined**

3 The State Tax Assessor shall determine the amount of tax due and payable upon any
4 estate or part of that estate. If, after determination and certification of the full amount of
5 the tax upon an estate or any interest in or part of an estate, the estate ~~shall receive~~
6 receives or ~~become becomes~~ entitled to property in addition to that shown in the estate
7 tax return filed with the ~~State Tax Assessor~~ assessor or the United States Internal
8 Revenue Service changes any item increasing the estate's liability shown in the Maine
9 estate tax return filed with the assessor, the personal representative shall ~~forthwith notify~~
10 ~~the State Tax Assessor who~~ within 90 days of any receipt, entitlement or change file an
11 amended Maine estate tax return. The assessor shall ~~upon being informed, by the notice~~
12 or otherwise, determine the amount of additional tax, ~~if any, due and payable thereon~~ and
13 shall certify the amount due, including interest and penalties, to the person by whom the
14 tax is payable, ~~including interest and penalties~~.

15 **Sec. 29. 36 MRSA §5219-S**, as amended by PL 2003, c. 20, Pt. GG, §1, is
16 repealed and the following enacted in its place:

17 **§5219-S. Earned income credit**

18 **1. Resident taxpayer.** A resident individual is allowed a credit against the tax
19 otherwise due under this Part in the amount of 5% of the federal earned income credit for
20 the same taxable year.

21 **2. Nonresident taxpayer.** A nonresident individual is allowed a credit against the
22 tax otherwise due under this Part in the amount of 5% of the federal earned income credit
23 for the same taxable year multiplied by the ratio of the individual's Maine adjusted gross
24 income, as defined in section 5102, subsection 1-C, paragraph B, to the individual's entire
25 federal adjusted gross income, as modified by section 5122.

26 **3. Part-year resident taxpayer.** An individual who files a return as a part-year
27 resident in accordance with section 5224-A is allowed a credit against the tax otherwise
28 due under this Part in the amount of 5% of the federal earned income credit for the same
29 taxable year multiplied by a ratio, the numerator of which is the individual's Maine
30 adjusted gross income as defined in section 5102, subsection 1-C, paragraph A for that
31 portion of the taxable year during which the individual was a resident plus the individual's
32 Maine adjusted gross income as defined in section 5102, subsection 1-C, paragraph B for
33 that portion of the taxable year during which the individual was a nonresident and the
34 denominator of which is the individual's entire federal adjusted gross income, as modified
35 by section 5122.

36 **4. Limitation.** The credit allowed by this section may not reduce the Maine income
37 tax to less than zero.

38 **Sec. 30. 36 MRSA §5219-BB** is enacted to read:

1 **§5219-BB. Community wind power generator credit**

2 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
3 following terms have the following meanings.

4 A. "Commission" means the Public Utilities Commission.

5 B. "Community wind power generation facility" means an electricity-generating
6 facility at any one site with an instantaneous generating nameplate capacity of not
7 more than 10 megawatts that is powered entirely by wind energy.

8 C. "Payroll" means the total amount paid in this State during the tax period by the
9 taxpayer for compensation, including wages, pretax employee contributions made to
10 a benefit package and employer contributions made to an employee benefit package.

11 D. "Property value" means the average value of the taxpayer's real and tangible
12 personal property that is owned or rented and used during the tax period. Property
13 owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is
14 valued at 8 times the net annual rental rate. The net annual rental rate is the annual
15 rental rate paid by the taxpayer.

16 E. "Qualified community wind power generator" means a person that has been
17 certified as a community wind power generator by the commission pursuant to Title
18 35-A, section 3403, subsection 3.

19 **2. Credit.** A taxpayer that is a qualified community wind power generator is
20 allowed a credit against the tax imposed by this Part equal to 100% of the tax otherwise
21 due under this Part that is attributable to ownership of a community wind power
22 generation facility in this State. The amount of the tax attributable to ownership of a
23 community wind power generation facility in this State is calculated by an
24 apportionment. The apportionment is determined by multiplying a fraction, the numerator
25 of which is the property value plus the payroll for the taxable year attributed to ownership
26 of a community wind power generation facility in this State and the denominator of
27 which is the statewide property value plus payroll for the taxable year of the taxpayer, by
28 the total tax otherwise due under this Part from the qualified community wind power
29 generator. The credit is available for the first taxable year that begins after the
30 commencement of operation of a community wind power generation facility in this State
31 and prior to the tax year beginning on or after January 1, 2008.

32 If the qualified community wind power generator is a taxable corporation that is a
33 member of an affiliated group engaged in a unitary business, the property value and
34 payroll in the State of the unitary affiliated group must be included in the apportionment
35 fraction. The resulting fraction must be multiplied by the total tax otherwise due under
36 this Part of the qualified community wind power generator and the affiliated group
37 engaged in the unitary business.

38 If the apportionment provisions of this subsection do not fairly reflect the amount of the
39 credit attributable to the taxpayer's ownership of a community wind power generation
40 facility in this State, the taxpayer may petition for, or the State Tax Assessor may require,
41 in respect to all or any part of the taxpayer's business activity, the employment of another
42 reasonable method to effectuate an equitable apportionment of the credit.

1 **3. Qualification.** The credit allowed under this section is available only to a
2 qualified community wind power generator certified by the commission prior to January
3 1, 2008.

4 **4. Termination of credit.** The credit provided in this section is available only for
5 tax years beginning on or after January 1, 2006 but before January 1, 2008.

6 **Sec. 31. 36 MRSA §5245** is enacted to read:

7 **§5245. Amended returns**

8 **1. Amended return required.** Every partnership or S corporation that is required
9 by section 5241 to file a return shall file an amended Maine return whenever the
10 partnership or S corporation files an amended federal return affecting its net income
11 under this Part or the amount of the distributive share of any partner or shareholder under
12 this Part, whenever the United States Internal Revenue Service changes or corrects any
13 item affecting the taxpayer's net income under this Part or the amount of the distributive
14 share of any partner or shareholder under this Part or whenever for any reason there is a
15 change or correction affecting the taxpayer's net income under this Part or the amount of
16 the distributive share of any partner or shareholder under this Part. The amended Maine
17 return must be filed within 90 days of the final determination of the change or correction
18 or the filing of the federal amended return.

19 **2. Contents of amended return.** The amended Maine return must indicate the
20 change or correction and the reason for that change or correction. The amended return
21 constitutes an admission as to the correctness of the change unless the taxpayer includes
22 with the return a written explanation of the reason the change or correction is erroneous.
23 If the taxpayer files an amended federal return, a copy of the amended federal return must
24 be attached to the amended Maine return. The State Tax Assessor may require additional
25 information to be filed with the amended Maine return. The assessor may prescribe
26 exceptions to the requirements of this section.

27 **3. Notice of change or correction.** A claim for credit or refund arising from an
28 amended return filed pursuant to this section may not be made by a partner or shareholder
29 of the partnership or S corporation unless the amended return is filed by the partnership
30 or S corporation within 3 years from the time the original return was filed. For purposes
31 of this subsection, any return filed before the last day prescribed for the filing of a return
32 is considered as filed on that last day.

33 **Sec. 32. 36 MRSA §6664**, as amended by PL 2005, c. 622, §31 and affected by
34 §34, is repealed.

35 **Sec. 33. 36 MRSA §6902, sub-§2**, as enacted by PL 2005, c. 519, Pt. GG, §3, is
36 amended to read:

37 **2. Procedure for reimbursement.** ~~On or before the 15th day of the month~~
38 ~~immediately~~ Within 6 weeks following receipt of a tax reimbursement and credit
39 certificate pursuant to Title 5, section 13090-L, subsection 4, a media production
40 company shall report to the State Tax Assessor ~~and to the Department of Economic and~~

1 ~~Community Development~~ that portion of certified production wages paid during the
2 project period, together with any additional information the assessor may reasonably
3 require. The assessor shall ~~report~~ certify to the commissioner the reimbursement amount
4 to which a media production company is entitled. The commissioner shall deposit the
5 ~~reported amounts on or before June 30th of each year~~ certified by the assessor in a media
6 production reimbursement account established, maintained and administered by the
7 commissioner and shall pay ~~the reported~~ those amounts to each ~~certified~~ media
8 production company ~~on or before July 31st of each year~~ within 90 days of the receipt by
9 the assessor of the media production company's report.

10 **Sec. 34. Application.** That section of this Act that repeals and replaces the Maine
11 Revised Statutes, Title 36, section 5219-S applies to tax years beginning on or after
12 January 1, 2008.

13 **Sec. 35. Retroactivity.** That section of this Act that amends the Maine Revised
14 Statutes, Title 30-A, section 5223, subsection 3 applies retroactively to August 23, 2006.
15 Those sections of this Act that amend Title 35-A, section 3402 and enact Title 35-A,
16 section 3403, subsection 3 apply retroactively to August 23, 2006. Those sections of this
17 Act that amend Title 36, section 1760, subsection 89 and Title 36, section 2017 apply
18 retroactively to August 23, 2006. That section of this Act that enacts Title 36, section
19 5219-BB applies retroactively to August 23, 2006. Those sections of this Act that amend
20 Title 36, section 4062, subsection 2; enact section 4062, subsection 8-A; and repeal
21 section 4062, subsection 8 and section 4071 are effective retroactively to May 1, 2007.

22 SUMMARY

23 This bill amends statutes that affect administration of sales tax exemption and refund
24 provisions and income tax credit provisions related to the Maine Wind Energy Act.

25 It provides that the penalties generally applicable to taxes imposed under the Maine
26 Revised Statutes, Title 36 apply to the state tax on telecommunications personal property.

27 It allows the Department of Administrative and Financial Services, Bureau of
28 Revenue Services to share otherwise confidential information with the Department of
29 Economic and Community Development to the extent necessary for the proper
30 administration of the Maine Employment Tax Increment Financing Program, the media
31 production credit and the media production reimbursement.

32 It authorizes the State Tax Assessor to require electronic filing and payment of
33 Competitive Skills Scholarship Fund contributions.

34 It amends the state tax on telecommunications personal property to establish
35 mandatory reporting requirements and to clarify the penalties that may be imposed for
36 failure to file returns and pay the tax.

37 It authorizes the State Tax Assessor to set off against revenues received credit card
38 fees incurred by the assessor in connection with the collection of excise taxes in the
39 unorganized territory.

1 It clarifies the administration of the sales tax exemption for and the reimbursement
2 provisions of the Maine Wind Energy Act.

3 It imposes the requirement that if an internal combustion engine fuel distributor
4 includes the excise tax on internal combustion engine fuel on a customer's bill it must be
5 shown as a separate line item and identified as "Maine gasoline tax."

6 It imposes the requirement that if a special fuel supplier or retailer includes the excise
7 tax on special fuel on a customer's bill it must be shown as a separate line item and
8 identified as "Maine special fuel tax."

9 It establishes a credit against the tax on a resident decedent's estate for taxes paid to
10 another jurisdiction on certain real or tangible property located in the other jurisdiction
11 that is also taxed by Maine.

12 It makes specific the requirement that an amended Maine estate tax return must be
13 filed if the United States Internal Revenue Service makes changes or if additional assets
14 are discovered.

15 It clarifies that the amount of earned income credit is prorated for nonresidents and
16 part-year residents.

17 It changes the community wind power generator credit by adding definitions and
18 providing for apportionment of the credit.

19 It establishes a requirement for partnerships and S corporations to file amended
20 information returns in certain circumstances.

21 It eliminates a requirement that the State Tax Assessor report to the Legislature
22 certain information regarding applicants for reimbursement under the BETR program.
23 The purpose of the report is to identify the extent of overlap between reimbursement for
24 property taxes on personal property under the BETR program and under a tax increment
25 financing agreement. This "double-dipping" has now been eliminated for new property.

26 It eliminates a requirement that information provided to the State Tax Assessor in
27 connection with a media production tax reimbursement claim must also be provided by
28 the applicant to the Department of Economic and Community Development and changes
29 the reimbursement period to 90 days from the date the assessor receives the information.

30 It provides the State Tax Assessor with explicit statutory authority to use sampling
31 techniques in conducting audits.

32 It makes the sales and use tax laws consistent with administrative practice regarding
33 the treatment of exempt sales for resale and the issuance and use of resale certificates.

34 It provides that the State Tax Assessor has the authority to determine the Maine
35 taxable estate and the value of the estate for estate tax purposes.