

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



STATE LAW LIBRARY  
AUGUSTA, MAINE

# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

---

Legislative Document

No. 1368

H.P. 958

House of Representatives, April 2, 2009

---

**An Act To Broaden and Increase the Sales Tax, Increase the Earned  
Income Tax Credit and Amend the Application Process for the  
Circuitbreaker Program**

---

Reference to the Committee on Taxation suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative WATSON of Bath.  
Cosponsored by Senator PERRY of Penobscot and  
Representatives: CROCKETT of Augusta, FLEMINGS of Bar Harbor, PERCY of Phippsburg.

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

2 PART A

3 Sec. A-1. 36 MRSA §1752, sub-§1-I is enacted to read:

4 1-I. Amusement, entertainment and recreation services. "Amusement,  
5 entertainment and recreation services" means the following services, except those  
6 services provided by a governmental entity or an incorporated nonprofit organization:  
7 admission to entertainment venues and performances, including theaters, movies,  
8 lectures, concerts, amusement parks, water parks, fairgrounds except for licensed  
9 agricultural fairs, race tracks, carnivals, circuses, sports activities, stadiums,  
10 amphitheaters, museums, planetariums, animal parks, petting zoos, aquariums, historical  
11 sites and convention centers; fees charged for participation in or entry to golf courses,  
12 miniature golf courses, bowling alleys, swimming pools, skating rinks, billiard parlors,  
13 gymnasiums, go-cart courses, tennis and racquetball courts and paintball; admission fees  
14 charged for exhibition shows such as auto, boat, camping, home, garden, animal and  
15 antique shows; scenic and sightseeing excursions including whitewater rafting, guided  
16 recreation, but excluding guided recreation services on federally navigable waters, and  
17 aircraft, helicopter, balloon, blimp; watercraft, railroad, bus, trolley and wagon rides;  
18 lessons and training in such areas as music, sports, dance, martial arts, gymnastics,  
19 physical fitness, art and crafts; entertainment services such as those provided by bands,  
20 orchestras, disc jockeys, comedians, clowns, jugglers, children's entertainers and  
21 ventriloquists; and proceeds from arcade games.

22 Sec. A-2. 36 MRSA §1752, sub-§8-A, as repealed and replaced by PL 2001, c.  
23 439, Pt. TTTT, §1 and affected by §3, is amended to read:

24 **8-A. Prepared food.** "Prepared food" means:

25 A. Meals or items usually consumed as part of a meal served on or off the premises  
26 of the retailer; and

27 B. Food and drinks that are prepared by the retailer for human consumption and  
28 ready for consumption without further preparation; and that are not grocery staples,  
29 including, but not limited to:

30 (1) Candy and confections, including, but not limited to, marshmallows and  
31 marshmallow creme or fluff;

32 (2) Soft drinks;

33 (3) Sandwiches and prepared salads;

34 (4) Supplemental meal items such as corn chips, potato chips and crisped  
35 vegetable or fruit chips, pork rinds, pretzels, crackers, popped popcorn, cheese  
36 sticks and cheese puffs;

37 (5) Fruit bars, granola bars, breakfast bars, rice cakes, bread sticks and dried  
38 sugared fruit;

39 (6) Roasted nuts and seeds;

1           (7) Desserts and bakery items, including, but not limited to, doughnuts, cookies,  
2           pastries, toaster pastries, croissants, cakes, pies, ice cream cones, ice cream, ice  
3           milk, frozen confections, frozen yogurt, sherbet, ready-to-eat pudding and  
4           gelatins and dessert sauces; and

5           (8) Meat jerky, meat bars and dips.

6           ~~C.—All food and drinks sold from an establishment whose sales of food and drinks~~  
7           ~~that are prepared by the retailer account for more than 75% of the establishment's~~  
8           ~~gross receipts.~~

9           ~~"Prepared food" does not include bulk sales of grocery staples.~~

10           As used in this subsection, "without further preparation" means that the product does not  
11           require boiling, frying, grilling, baking or cooking of any kind or is not mixed with other  
12           products before being boiled, fried, grilled, baked or cooked. "Without further  
13           preparation" does not include toasting, microwaving or otherwise heating a product for  
14           palatability rather than for the purpose of cooking the product.

15           **Sec. A-3. 36 MRSA §1752, sub-§17-B**, as amended by PL 2007, c. 410, §2 and  
16           affected by §6, is further amended to read:

17           **17-B. Taxable service.** "Taxable service" means the rental of living quarters in a  
18           hotel, rooming house, tourist or trailer camp; the transmission and distribution of  
19           electricity; the rental or lease of an automobile; the sale of an extended service contract  
20           on an automobile that entitles the purchaser to specific benefits in the service of the  
21           automobile for a specific duration; amusement, entertainment and recreation services; and  
22           the sale of prepaid calling service.

23           **Sec. A-4. 36 MRSA §1811, first ¶**, as repealed and replaced by PL 2007, c. 627,  
24           §51 and affected by §96, is amended to read:

25           A tax is imposed on the value of all tangible personal property and taxable services  
26           sold at retail in this State. The rate of tax is 7% on the value of liquor sold in licensed  
27           establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title  
28           28-A, chapter 43; ~~7%~~ 8% on the value of rental of living quarters in any hotel, rooming  
29           house or tourist or trailer camp; 10% on the value of rental for a period of less than one  
30           year of an automobile, including a loaner vehicle that is provided other than to a motor  
31           vehicle dealer's service customers pursuant to a manufacturer's or dealer's warranty; ~~7%~~  
32           8% on the value of prepared food; and ~~5%~~ 6% on the value of all other tangible personal  
33           property and taxable services. Value is measured by the sale price, except as otherwise  
34           provided. The value of rental for a period of less than one year of an automobile is the  
35           total rental charged to the lessee and includes, but is not limited to, maintenance and  
36           service contracts, drop-off or pick-up fees, airport surcharges, mileage fees and any  
37           separately itemized charges on the rental agreement to recover the owner's estimated  
38           costs of the charges imposed by government authority for title fees, inspection fees, local  
39           excise tax and agent fees on all vehicles in its rental fleet registered in the State. All fees  
40           must be disclosed when an estimated quote is provided to the lessee.

41           **Sec. A-5. 36 MRSA §1811, 3rd ¶**, as repealed and replaced by PL 2003, c. 510,  
42           Pt. C, §12 and affected by §13, is amended to read:

1 Rental or lease of an automobile for one year or more must be taxed at the time of the  
2 lease or rental transaction at ~~5%~~ 6% of the following: the total monthly lease payment  
3 multiplied by the number of payments in the lease or rental, the amount of equity  
4 involved in any trade-in and the value of any cash down payment. Collection and  
5 remittance of the tax is the responsibility of the person that negotiates the lease  
6 transaction with the lessee.

7 **Sec. A-6. Effective date.** This Part takes effect October 1, 2009.

8 **PART B**

9 **Sec. B-1. 36 MRSA §5219-S**, as repealed and replaced by PL 2007, c. 693, §31,  
10 is amended to read:

11 **§5219-S. Earned income credit**

12 **1. Resident taxpayer.** A resident individual is allowed a credit against the tax  
13 otherwise due under this Part in the amount of ~~5%~~ 25% of the federal earned income  
14 credit for the same taxable year.

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

20 **3. Part-year resident taxpayer.** An individual who files a return as a part-year  
21 resident in accordance with section 5224-A is allowed a credit against the tax otherwise  
22 due under this Part in the amount of ~~5%~~ 25% of the federal earned income credit for the  
23 same taxable year multiplied by a ratio, the numerator of which is the individual's Maine  
24 adjusted gross income as defined in section 5102, subsection 1-C, paragraph A for that  
25 portion of the taxable year during which the individual was a resident plus the  
26 individual's Maine adjusted gross income as defined in section 5102, subsection 1-C,  
27 paragraph B for that portion of the taxable year during which the individual was a  
28 nonresident and the denominator of which is the individual's entire federal adjusted gross  
29 income, as modified by section 5122.

30 **4. Limitation.** The credit allowed by this section ~~may not reduce the Maine income~~  
31 ~~tax to less than zero~~ is fully refundable.

32 **PART C**

33 **Sec. C-1. 36 MRSA §5276, sub-§1**, as amended by PL 2005, c. 332, §25, is  
34 further amended to read:

35 **1. General rule.** The State Tax Assessor, within the applicable period of limitations,  
36 may credit an overpayment of income tax, including an overpayment reported on a joint  
37 return, and interest on the overpayment against any liability arising from a  
38 redetermination pursuant to section ~~6214~~ 6203-B or any liability in respect of any tax

1 imposed under this Title owed by the taxpayer, or by the taxpayer's spouse in the case of  
2 a joint return. The balance, after any setoff pursuant to section 5276-A, must be refunded  
3 by the Treasurer of State.

4 **Sec. C-2. 36 MRSA §6201, sub-§12**, as amended by PL 2005, c. 218, §58, is  
5 further amended to read:

6 **12. Year for which relief is requested.** "Year for which relief is requested" means  
7 the calendar year preceding that in which the claim is filed. ~~For a claim filed during~~  
8 ~~January to May of any year, or during the extension period allowed under section 6215,~~  
9 ~~"year for which relief is requested" means the calendar year 2 years preceding that in~~  
10 ~~which the claim is filed.~~

11 **Sec. C-3. 36 MRSA §6203-A**, as enacted by PL 2003, c. 673, Pt. BB, §2, is  
12 amended to read:

13 **§6203-A. Procedure for reimbursement**

14 At least monthly on or before the last day of the month, the State Tax Assessor shall  
15 determine the benefit for each claimant under this chapter and certify the amount to the  
16 State Controller to be transferred to the so-called circuit breaker reserve established,  
17 maintained and administered by the State Controller from General Fund undedicated  
18 revenue within the individual income tax category. At least monthly, ~~the assessor shall~~  
19 ~~pay the certified amounts to each approved applicant qualifying for the benefit under this~~  
20 ~~chapter~~ payments of claims must be made as provided in section 6203-B. Interest may  
21 not be allowed on any payment made to a claimant pursuant to this chapter.

22 **Sec. C-4. 36 MRSA §6203-B** is enacted to read:

23 **§6203-B. Payment of claim**

24 **1. Payment options.** Claimants under this chapter may select any one of the  
25 following payment options for each claim.

26 A. The claimant may choose to have payment made directly to the claimant.

27 B. Beginning with claims filed in 2010, the claimant may choose to have the  
28 payment applied against the claimant's individual income tax for the income tax year  
29 in which the claim is payable.

30 C. The claimant may choose to have payment made directly to the municipality  
31 where the claimant's homestead is located to offset an equal amount of property taxes  
32 owed to the municipality by the claimant.

33 **2. Payment procedure.** Upon approval of claims by the assessor, the assessor shall  
34 prepare and certify a list of individuals entitled to a claim under this chapter who have  
35 chosen a payment option authorized under subsection 1, paragraph A or C, together with  
36 the respective amount attributable to each individual and indicating the payment option  
37 chosen by the claimant, and shall forward the list to the State Controller on or before  
38 September 30th, except that in 2009 the certification must be made on or before October  
39 10th. The Treasurer of State, upon direction of the State Controller, shall pay and

1 distribute the claims certified by the assessor to the appropriate payee on or before  
2 October 20th annually. A claim of less than \$5 may not be granted. Claims not certified  
3 by the assessor by September 30th may be certified as soon as practicable thereafter, but  
4 such claims need not be paid by the State Controller by October 20th.

5 **3. Review by assessor; setoff required.** The assessor shall review every application  
6 filed pursuant to this chapter and may reject a claim if the assessor determines that no  
7 payment is due. If the assessor determines that a claim has been incorrectly determined,  
8 the assessor shall adjust the claim. The assessor shall notify the claimant in writing of  
9 any rejection or adjustment and the reasons for the rejection or adjustment. The rejection  
10 or adjustment is final unless appealed by the claimant pursuant to section 6213. The  
11 assessor shall set off against the claim payment any other tax liability owed by the  
12 claimant pursuant to this Title.

13 **4. Payments made in error.** If the assessor determines that a claim has been  
14 incorrectly calculated or paid in error, the amount paid may be recovered by assessment  
15 pursuant to section 141, and the assessment bears interest from the date of payment of the  
16 claim, until refunded or paid, at the rate provided by section 186.

17 **Sec. C-5. 36 MRSA §6204**, as amended by PL 2005, c. 2, Pt. E, §3 and affected  
18 by §§7 and 8 and is further amended to read:

19 **§6204. Filing date**

20 A claim may not be paid unless the claim is filed with the Bureau of Revenue  
21 Services on or after August 1st and on or before the following May 31st, except that in  
22 2009 the filing period begins August 1, 2009 and ends December 31, 2009. For program  
23 years that begin after 2009, the period for filing a claim with the Bureau of Revenue  
24 Services begins on January 1st following the year for which relief is requested and ends  
25 on the following June 30th.

26 **Sec. C-6. 36 MRSA §6210**, as amended by PL 2005, c. 218, §59, is further  
27 amended to read:

28 **§6210. Administration**

29 The State Tax Assessor shall make available suitable forms with instructions for  
30 claimants. The claim must be in the form prescribed by the assessor and must be signed  
31 by the claimant.

32 ~~The assessor shall include a checkoff to request an application for~~ A claimant may  
33 apply for a benefit under the Maine Residents Property Tax Program on the that  
34 claimant's individual income tax form. The assessor shall also provide a paperless option  
35 for filing an application for the Maine Residents Property Tax Program.

36 **Sec. C-7. 36 MRSA §6211**, as amended by PL 2005, c. 332, §27, is repealed.

37 **Sec. C-8. Modification of income tax form.** The State Tax Assessor shall  
38 modify the individual income tax form to include the ability of an individual to use the  
39 form to submit a claim under the Maine Residents Property Tax Program and to indicate

1 the method of payment of the claim as described in the Maine Revised Statutes, Title 36,  
2 section 6203-B.

3 **Sec. C-9. Inclusion of application for Maine Residents Property Tax**  
4 **Program on Department of Health and Human Services public assistance**  
5 **application.** The Department of Health and Human Services, office of integrated access  
6 and support shall add to its uniform application for public assistance the ability to request  
7 an application for the Maine Residents Property Tax Program. The office shall forward a  
8 request for an application for the Maine Residents Property Tax Program to the State Tax  
9 Assessor.

10 **Sec. C-10. Transition; delay of payments.** Notwithstanding the Maine Revised  
11 Statutes, Title 36, section 6203-A, in order to accommodate the transition of the  
12 application period for the Maine Residents Property Tax Program from August 1st to the  
13 following May 31st for benefits from the prior calendar year to an application period  
14 beginning January 1st and ending June 30th, for benefits arising during the 2009 calendar  
15 year, the State Tax Assessor shall delay payment of those benefits until after July 1, 2010.

16 **Sec. C-11. Application.** This Act applies to applications for the Maine Residents  
17 Property Tax Program filed on or after August 1, 2009, exclusive of applications filed on  
18 extension from the prior filing period.

19 **SUMMARY**

20 Part A broadens the sales tax base by adding amusement, entertainment and  
21 recreation services and including certain prepared foods, such as candy, potato chips and  
22 bakery products. This bill also increases the general sales tax rate from 5% to 6% and the  
23 sales tax on prepared food and lodging from 7% to 8%.

24 Part B increases the state earned income credit from 5% to 25% of the federal credit  
25 and provides that the state earned income credit is fully refundable.

26 Part C amends the Maine Residents Property Tax Program, also known as "the  
27 Circuitbreaker Program," by allowing an individual to apply for a benefit using the  
28 individual income tax form. Due to the difference in the time period covered by the  
29 Circuitbreaker Program and individual income taxes, the filing period for benefits under  
30 the Circuitbreaker Program is changed from August 1st to the following May 31st to  
31 January 1st to the following June 30th, beginning with benefit years beginning after 2009.

32 For the first year that this change in the application period is in effect, a double  
33 benefit payment will occur. Currently, benefits that accrue during a calendar year are not  
34 claimed and payable until after August of the following year. Since the effect of this Part  
35 is to allow an individual to use the income tax form to apply for benefits that accrued the  
36 immediately prior year and be paid within a month of the end of the calendar year, that  
37 could result in 2 payments being made: one from 2008 and one from 2009. In order to  
38 lessen the impact of double payments, the State Tax Assessor is directed to delay any  
39 benefits claimed for the 2009 calendar year until after July 1, 2010.



1 Part C also requires the Department of Health and Human Services to add to its  
2 uniform application for public assistance; including MaineCare and food stamps, the  
3 ability to request an application for the Maine Residents Property Tax Program.