

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

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No. 1338

H.P. 932

House of Representatives, April 6, 2017

**An Act To Create and Sustain Jobs through Development of
Cooperatives and Employee-owned Businesses**

Reference to the Committee on Taxation suggested and ordered printed.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
Clerk

Presented by Representative GROHMAN of Biddeford.
Cosponsored by Representative CHAPMAN of Brooksville, Senator CUSHING of Penobscot
and Representatives: CASÁS of Rockport, HICKMAN of Winthrop, WARD of Dedham,
Senator: CARPENTER of Aroostook.

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

2 **Sec. 1. 36 MRSA §5122, sub-§2, ¶¶PP and QQ** are enacted to read:

3 PP. For taxable years beginning on or after January 1, 2017, to the extent included in
4 federal adjusted gross income and to the extent otherwise subject to Maine income
5 tax, an amount equal to any gain recognized on the sale by the taxpayer of an
6 ownership interest in a qualified business if the business was transferred to:

7 (1) An employee stock ownership plan as defined in the Code, Section
8 4975(e)(7);

9 (2) An S corporation of the State owned by an employee stock ownership plan;

10 (3) An eligible worker-owned cooperative as defined in the Code, Section
11 1042(c)(2);

12 (4) A consumer cooperative organized under Title 13, chapter 85, subchapter 1;
13 or

14 (5) If the business provides housing, a consumer cooperative or a cooperative
15 affordable housing corporation organized under Title 13, chapter 85, subchapter
16 1-A.

17 For purposes of this paragraph, "qualified business" means a business whose
18 securities are not publicly traded on any stock exchange and that is organized in the
19 State or whose principal place of business is within the State including a corporation,
20 an S corporation, a limited liability company, a limited liability partnership, a sole
21 proprietorship and all private entities related by common ownership or control.

22 QQ. For taxable years beginning on or after January 1, 2017, to the extent included
23 in federal adjusted gross income and to the extent otherwise subject to Maine income
24 tax, an amount equal to the interest received during the taxable year by the taxpayer
25 with respect to a qualified business acquisition loan. For purposes of this paragraph:

26 (1) "Qualified business" means a business whose securities are not publicly
27 traded on any stock exchange and that is organized in the State or whose
28 principal place of business is within the State including a corporation, an S
29 corporation, a limited liability company, a limited liability partnership, a sole
30 proprietorship and all private entities related by common ownership or control;
31 and

32 (2) "Qualified business acquisition loan," including a loan or part of a series of
33 loans, means:

34 (a) A loan of which at least 90% of the proceeds are applied to the
35 acquisition of majority ownership of a qualified business not owned by an
36 entity under subdivisions (i) to (v) and that is given to:

37 (i) An employee stock ownership plan as defined in the Code, Section
38 4975(e)(7);

39 (ii) An S corporation of the State owned by an employee stock
40 ownership plan;

- 1 (iii) An eligible worker-owned cooperative as defined in the Code,
2 Section 1042(c)(2);
- 3 (iv) A consumer cooperative organized under Title 13, chapter 85,
4 subchapter 1; or
- 5 (v) If the business provides housing, a consumer cooperative or a
6 cooperative affordable housing corporation organized under Title 13,
7 chapter 85, subchapter 1-A;
- 8 (b) A loan to a corporation that sponsors an employee stock ownership plan
9 if all proceeds of the loan are loaned to the employee stock ownership plan to
10 acquire for the plan all outstanding employer securities in a qualified
11 business and the plan's repayment terms are substantially similar to the
12 corporation's repayment terms; or
- 13 (c) A loan used to refinance a qualified business acquisition loan.

14 **Sec. 2. 36 MRSA §5200-A, sub-§2, ¶¶BB and CC** are enacted to read:

15 BB. For taxable years beginning on or after January 1, 2017, to the extent included in
16 federal adjusted gross income and to the extent otherwise subject to Maine income
17 tax, an amount equal to any gain recognized on the sale by the taxpayer of an
18 ownership interest in a qualified business if the business was transferred to:

- 19 (1) An employee stock ownership plan as defined in the Code, Section
20 4975(e)(7);
- 21 (2) An S corporation of the State owned by an employee stock ownership plan;
- 22 (3) An eligible worker-owned cooperative as defined in the Code, Section
23 1042(c)(2);
- 24 (4) A consumer cooperative organized under Title 13, chapter 85, subchapter 1;
25 or
- 26 (5) If the business provides housing, a consumer cooperative or a cooperative
27 affordable housing corporation organized under Title 13, chapter 85, subchapter
28 1-A.

29 For purposes of this paragraph, "qualified business" means a business whose
30 securities are not publicly traded on any stock exchange and that is organized in the
31 State or whose principal place of business is within the State including a corporation,
32 an S corporation, a limited liability company, a limited liability partnership, a sole
33 proprietorship and all private entities related by common ownership or control.

34 CC. For taxable years beginning on or after January 1, 2017, to the extent included in
35 federal adjusted gross income and to the extent otherwise subject to Maine income
36 tax, an amount equal to the interest received during the taxable year by the taxpayer
37 with respect to a qualified business acquisition loan. For purposes of this paragraph:

- 38 (1) "Qualified business" means a business whose securities are not publicly
39 traded on any stock exchange and that is organized in the State or whose
40 principal place of business is within the State including a corporation, an S
41 corporation, a limited liability company, a limited liability partnership, a sole

1 proprietorship and all private entities related by common ownership or control;
2 and

3 (2) "Qualified business acquisition loan," including a loan or part of a series of
4 loans, means:

5 (a) A loan of which at least 90% of the proceeds are applied to the
6 acquisition of majority ownership of a qualified business not owned by an
7 entity under subdivisions (i) to (v) and that is given to:

8 (i) An employee stock ownership plan as defined in the Code, Section
9 4975(e)(7);

10 (ii) An S corporation of the State owned by an employee stock
11 ownership plan;

12 (iii) An eligible worker-owned cooperative as defined in the Code,
13 Section 1042(c)(2);

14 (iv) A consumer cooperative organized under Title 13, chapter 85,
15 subchapter 1; or

16 (v) If the business provides housing, a consumer cooperative or a
17 cooperative affordable housing corporation organized under Title 13,
18 chapter 85, subchapter 1-A;

19 (b) A loan to a corporation that sponsors an employee stock ownership plan
20 if all proceeds of the loan are loaned to the employee stock ownership plan to
21 acquire for the plan all outstanding employer securities in a qualified
22 business and the plan's repayment terms are substantially similar to the
23 corporation's repayment terms; or

24 (c) A loan used to refinance a qualified business acquisition loan.

25 **Sec. 3. 36 MRSA §5206-D, sub-§13**, as amended by PL 1999, c. 414, §43 and
26 affected by §57, is further amended to read:

27 **13. Maine net income.** "Maine net income" means, for any taxable year, a financial
28 institution's net income or loss per books required to be reported pursuant to the laws of
29 the United States on Internal Revenue Service Form 1120, 1120S, 1065 or any other
30 Internal Revenue Service form used to report net income or loss per books or, in the case
31 of an entity with a single owner that may be disregarded as an entity separate from its
32 owner pursuant to Internal Revenue Service regulations, the financial institution's net
33 income or loss per books determined as if the entity were required to file Internal
34 Revenue Service Form 1065, adjusted in accordance with section 5200-A, subsection 2,
35 paragraph CC, and apportioned to this State under section 5206-E. In the case of a
36 financial institution that is a qualified subchapter S subsidiary as defined by the Code,
37 Section 1361, the financial institution's "Maine net income" means a financial institution's
38 net income or loss per books determined as if the entity were required to file Internal
39 Revenue Service Form 1120S and apportioned to this State under section 5206-E.

40 To the extent that a financial institution derives income from a unitary business carried on
41 by 2 or more members of an affiliated group, "Maine net income" is determined by

1 appportioning, in accordance with section 5206-E, that part of the net income of the entire
2 group that derives from the unitary business.

3 **Sec. 4. Retroactivity.** That section of this Act that amends the Maine Revised
4 Statutes, Title 36, section 5206-D, subsection 13 applies retroactively to January 1, 2017.

5 **SUMMARY**

6 This bill supports employee-owned businesses and cooperatives in the following
7 ways.

8 1. It excludes from Maine income tax the amount of gain recognized by a business
9 owner in transferring the business to an employee stock ownership plan, eligible worker-
10 owned cooperative, consumer cooperative or affordable housing cooperative.

11 2. It excludes from Maine income tax interest from loans that finance transfers of
12 ownership from a business to an employee stock ownership plan, eligible worker-owned
13 cooperative, consumer cooperative or affordable housing cooperative.