

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1819

H.P. 1296

House of Representatives, June 3, 2019

**An Act To Harmonize State Income Tax Law and the Centralized
Partnership Audit Rules of the Federal Internal Revenue Code of
1986**

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative TIPPING of Orono.

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

2 **Sec. 1. 36 MRSA §5190**, as enacted by P&SL 1969, c. 154, Pt. F, §1, is amended
3 to read:

4 **§5190. Entity not taxable**

5 A partnership ~~as such shall~~ is not be subject to the tax imposed by this Part. Persons
6 carrying on business as partners ~~shall be~~ are liable for the tax imposed by this Part only in
7 their separate or individual capacities. This section does not apply to the taxes imposed
8 by chapters 819 and 827 or the tax imposed on partnership audit adjustments pursuant to
9 subchapter 2.

10 **Sec. 2. 36 MRSA c. 815, sub-c. 2** is enacted to read:

11 **SUBCHAPTER 2**

12 **PARTNERSHIP AUDITS**

13 **§5195. Definitions**

14 As used in this subchapter, unless the context otherwise indicates, the following
15 terms have the following meanings.

16 **1. Administrative adjustment request.** "Administrative adjustment request" means
17 an administrative adjustment request filed by a partnership pursuant to the Code, Section
18 6227.

19 **2. Audited partnership.** "Audited partnership" means a partnership subject to a
20 partnership-level audit resulting in a federal adjustment.

21 **3. Composite return.** "Composite return" means a Maine income tax return filed by
22 a partnership or pass-through entity on behalf of some or all of its partners, beneficiaries
23 or shareholders under rules adopted by the assessor.

24 **4. Corporate partner.** "Corporate partner" means a partner that is subject to tax
25 pursuant to chapter 817.

26 **5. Direct partner.** "Direct partner" means a partner that holds an interest directly in
27 a partnership or pass-through entity.

28 **6. Exempt partner.** "Exempt partner" means a partner that is subject to the tax
29 imposed by chapter 819 or exempt from the taxes imposed by chapters 803, 809 and 817,
30 except to the extent of unrelated business taxable income.

31 **7. Federal adjustment.** "Federal adjustment" means an adjustment to an item or
32 amount determined under the Code that affects the computation of a taxpayer's Maine tax
33 liability resulting from a partnership-level audit or other action by the IRS or an amended
34 federal return, refund claim or administrative adjustment request filed by a taxpayer.

1 **8. Federal adjustments report.** "Federal adjustments report" means a method or
2 form required by the assessor for use by a taxpayer to report final federal adjustments,
3 including an amended tax return and an information return. A federal adjustments report
4 is a return for purposes of this Title, including for the purpose of determining refund and
5 assessment periods, interest and penalties.

6 **9. Federal partnership representative.** "Federal partnership representative" means
7 the person designated by a partnership or appointed by the IRS to act on behalf of a
8 partnership pursuant to the Code, Section 6223(a) for the reviewed year.

9 **10. Final determination date.** "Final determination date" has the same meaning as
10 in section 5227-A, subsection 2.

11 **11. Final federal adjustment.** "Final federal adjustment" means a federal
12 adjustment for which the final determination date has passed.

13 **12. Indirect partner.** "Indirect partner" means a partner in a partnership or pass-
14 through entity that itself holds an interest directly, or through another indirect partner, in a
15 partnership or pass-through entity.

16 **13. IRS.** "IRS" means the United States Internal Revenue Service.

17 **14. Nonresident partner.** "Nonresident partner" means an individual, trust or estate
18 partner that is not a resident partner.

19 **15. Partner.** "Partner" means a person that holds an interest directly or indirectly in
20 a partnership or pass-through entity.

21 **16. Partnership.** "Partnership" means an entity subject to taxation under the Code,
22 Subtitle A, Chapter 1, Subchapter K other than a financial institution subject to tax
23 pursuant to chapter 819.

24 **17. Partnership-level audit.** "Partnership-level audit" means an examination by the
25 IRS at the partnership level pursuant to the Code, Subtitle F, Chapter 63, Subchapter C
26 that results in federal adjustments.

27 **18. Pass-through entity.** "Pass-through entity" means an entity, other than a
28 partnership, that is not subject to tax under chapter 817 or 819.

29 **19. Resident partner.** "Resident partner" means a partner that is a resident
30 individual or a resident estate or trust under this Part.

31 **20. Reviewed year.** "Reviewed year" means the taxable year of a partnership that is
32 subject to a partnership-level audit from which federal adjustments arise.

33 **21. State partnership representative.** "State partnership representative" means a
34 partnership's federal partnership representative for the reviewed year unless the
35 partnership designates in writing another person as its state partnership representative.

1 **22. Taxpayer.** "Taxpayer" has the same meaning as in section 111, subsection 7 and
2 includes a partnership subject to a partnership-level audit or a partnership that has made
3 an administrative adjustment request, as well as a tiered partner of that partnership.

4 **23. Tiered partner.** "Tiered partner" means a partner that is a partnership or pass-
5 through entity.

6 **24. Unrelated business taxable income.** "Unrelated business taxable income" has
7 the same meaning as in the Code, Section 512.

8 **§5196. Reporting federal adjustments; partnership-level audit and administrative**
9 **adjustment request**

10 **1. General rule.** Except in the case of adjustments required to be reported for
11 federal purposes under the Code, Section 6225(a)(2), a partner shall, in accordance with
12 section 5227-A, report and pay any amount due with respect to adjustments arising from
13 a partnership-level audit or other action by the IRS that is reported by the taxpayer on a
14 timely filed amended federal income tax return, including a return or other similar report
15 filed pursuant to the Code, Section 6225(c)(2), or a federal claim for refund by filing a
16 federal adjustments report with the assessor for the reviewed year and, if applicable,
17 paying the additional tax, penalties and interest due no later than 180 days after the final
18 determination date.

19 In the case of a partnership with partners required to file a federal adjustments report
20 pursuant to this subsection and included in a composite return or subject to withholding
21 under section 5250-B in the reviewed year, the partnership shall file an amended
22 composite return and amended withholding return as required by the assessor and pay any
23 additional tax, penalties and interest due no later than 180 days after the final
24 determination date.

25 **2. Authority of state partnership representative.** The state partnership
26 representative has sole authority to act on behalf of the partnership for the reviewed year
27 with respect to any action required or permitted under this subchapter, and actions
28 required or permitted under this Title arising from this subchapter, including a request for
29 review pursuant to section 151. The partnership's direct partners and indirect partners are
30 bound by the actions of the state partnership representative. The assessor may establish
31 reasonable qualifications and procedures for designating a person other than the federal
32 partnership representative to be the state partnership representative.

33 **3. Partnership reporting and payment.** An audited partnership is subject to tax
34 with respect to final federal adjustments without regard to the election under the Code,
35 Section 6226(a). The amount of tax is determined as provided in this subsection.

36 A. An audited partnership shall file a completed federal adjustments report,
37 including the distributive share of the adjustment paid by partners under subsection 1
38 and other information required by the assessor, and, if subject to tax under this
39 subsection, pay the tax due no later than 180 days after the final determination date.

40 B. The tax due pursuant to this subsection is determined as follows:

- 1 (1) Exclude from final federal adjustments the distributive share of adjustments
2 properly allocable to partners pursuant to subsection 1;
- 3 (2) Exclude from final federal adjustments the distributive share of adjustments
4 reported to direct exempt partners not subject to tax on unrelated business taxable
5 income;
- 6 (3) For the total distributive shares of the remaining final federal adjustments,
7 remove the portion of such adjustments this State is prohibited from taxing under
8 the Constitution of Maine or the United States Constitution, net of any expenses
9 incurred in production of that income;
- 10 (4) For the total distributive shares of the remaining final federal adjustments
11 reported to direct corporate partners subject to tax under chapter 817, and to
12 direct exempt partners subject to tax on unrelated business taxable income,
13 apportion and allocate such adjustments as provided under chapter 821 and
14 multiply the resulting amount by the highest tax rate under section 5200;
- 15 (5) For the total distributive shares of the remaining final federal adjustments
16 reported to direct partners that are nonresident partners subject to tax under
17 section 5111 or 5160, determine the amount of such adjustments that is Maine-
18 source income under sections 5142 and 5192 and multiply the resulting amount
19 by the highest tax rate under section 5111 for the applicable tax year;
- 20 (6) For the total distributive shares of the remaining final federal adjustments
21 reported to tiered partners:
- 22 (a) Determine the amount of such adjustments that is of a type that would be
23 subject to sourcing under section 5142, excluding section 5142, subsection 3,
24 and calculate the portion of this amount sourced to this State;
- 25 (b) Determine the amount of such adjustments that is income subject to
26 sourcing under section 5142, subsection 3; and
- 27 (c) Determine the portion of the amount determined in division (b) that can
28 be established to the satisfaction of the assessor to be properly allocable to
29 indirect partners that are nonresident partners or other partners not subject to
30 tax on the adjustments;
- 31 (7) Multiply the total of the amounts determined in subparagraph (6), divisions
32 (a) and (b), reduced by the amount determined in subparagraph (6), division (c),
33 by the highest tax rate under section 5111;
- 34 (8) For the total distributive shares of the remaining final federal adjustments
35 reported to resident direct partners subject to tax under section 5111 or 5160,
36 multiply that amount by the highest tax rate under section 5111 for the applicable
37 tax year; and
- 38 (9) Add the amounts determined in subparagraphs (4), (5), (7) and (8), along
39 with interest and penalties as provided in sections 186 and 187-B, respectively.
- 40 C. Notwithstanding section 5219-H, a partnership may not claim any of the credits in
41 chapter 822 against the tax imposed by this subsection. However, a partnership may
42 claim a credit for income taxes imposed on and paid by the partnership to another

1 state of the United States, a political subdivision of any such state, the District of
2 Columbia or any political subdivision of a foreign country that is analogous to a state
3 of the United States with respect to the distributive shares of the final federal
4 adjustments reported to resident direct partners included in the calculation pursuant to
5 paragraph B, subparagraph (8) and paid by the partnership to this State. The credit
6 under this paragraph is calculated in the same manner as the credit allowed by section
7 5217-A.

8 **4. Tiered partners.** The direct partners and indirect partners of an audited
9 partnership that are tiered partners, and all the partners of those tiered partners that are
10 subject to tax under section 5111, 5160 or 5200, are subject to the reporting and payment
11 requirements of this section.

12 **5. Effect of partnership reporting and payment of amounts due.** Except for
13 adjustments required to be reported and the tax paid under subsection 1, the proper
14 reporting of final federal adjustments and payment of amounts due by a partnership under
15 subsections 3 and 4 relieves the partners of the partnership of any tax liability resulting
16 from their distributive shares of the adjustments so reported. The direct partners or
17 indirect partners may not take any deduction or credit for this amount or claim a refund of
18 the amount in this State.

19 **6. Failure of audited partnership or tiered partner to report or pay.** Nothing in
20 this section prevents the assessor from assessing direct partners or indirect partners for
21 taxes they owe, using the best information available, in the event that a partnership or
22 tiered partner fails to timely make any report or payment required by this subchapter for
23 any reason.

24 **§5197. Extensions of time**

25 The time periods provided for in this subchapter may be extended:

26 **1. Automatically for 60 days.** Automatically, upon written notice to the assessor,
27 by 60 days for an audited partnership or tiered partner that has 10,000 or more direct
28 partners; or

29 **2. Written agreement.** By written agreement between the taxpayer and the
30 assessor.

31 Any extension granted under this section for filing the federal adjustments report
32 extends the last day prescribed by law for assessing any additional tax pursuant to
33 sections 141 and 5270 and the period for filing a claim for refund or credit of taxes
34 pursuant to sections 144 and 5278 arising from the final federal adjustment.

35 **§5198. Rules**

36 The assessor may adopt rules governing the treatment of part-year residents and other
37 rules necessary to implement this subchapter. Rules adopted under this section are
38 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

1 **Sec. 3. 36 MRSA §5227-A, sub-§2**, as amended by PL 2011, c. 1, Pt. CC, §3 and
2 affected by §5, is further amended to read:

3 **2. Amended return filed.** The amended Maine return must be filed within 180 days
4 from the ~~date of the~~ final determination date of the change or correction or the filing of
5 the federal amended return. For purposes of this subsection, "~~date of the~~ final
6 determination date" means the date on which the earliest of the following events occurs
7 with respect to a federal taxable year:

8 A. The taxpayer has made payment of an additional income tax liability resulting
9 from a federal audit, the taxpayer has not filed a petition for redetermination or claim
10 for refund for the portions of the audit for which payment was made and the time for
11 filing a petition for redetermination or refund claim has expired;

12 B. The taxpayer receives a refund from the United States Treasury that resulted from
13 a federal audit;

14 C. The taxpayer signs Form 870-AD or another Internal Revenue Service form
15 consenting to a deficiency or accepting an overassessment;

16 D. The taxpayer's time for filing a petition for redetermination with the United States
17 Tax Court expires;

18 E. The taxpayer and the Internal Revenue Service enter into a closing agreement; ~~and~~

19 F. A decision from the United States Tax Court, a District Court, a federal court of
20 appeals, the United States Court of Federal Claims or the United States Supreme
21 Court becomes final; ~~and~~ and

22 G. The taxpayer files an amended return or similar report pursuant to the Code,
23 Section 6225(c).

24 **Sec. 4. Maine Revised Statutes headnote amended; revision clause.** In the
25 Maine Revised Statutes, Title 36, chapter 815, before section 5190, the headnote
26 "subchapter 1, generally" is enacted and the Revisor of Statutes shall implement this
27 revision when updating, publishing or republishing the statutes.

28 **Sec. 5. Application.** This Act applies to partnership-level audits, as defined in the
29 Maine Revised Statutes, Title 36, section 5195, with respect to taxable years beginning on
30 or after January 1, 2018.

31 **SUMMARY**

32 This bill harmonizes Maine law with recent changes in federal law with respect to
33 partnership income tax audits wherein a partnership may be liable for federal income tax,
34 penalties and interest that result from an audit of the partnership. This bill imposes a
35 corresponding partnership state tax liability for increases in tax, penalties and interest that
36 result from a federal audit of the partnership. This bill applies to partnership-level audits
37 of partnerships with respect to taxable years beginning on or after January 1, 2018.