

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2020

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Legislative Document

No. 2011

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H.P. 1432

House of Representatives, January 14, 2020

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**An Act To Update Certain Provisions in the Income Tax and Service  
Provider Tax Laws**

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Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 203.

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert 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 **PART A**

3 **Sec. A-1. 30-A MRSA §5681, sub-§5**, as amended by PL 2019, c. 343, Pt. H, §1,  
4 is further amended to read:

5 **5. Transfers to funds.** No later than the 10th day of each month, the State  
6 Controller shall transfer to the Local Government Fund 5% of the receipts during the  
7 previous month from the taxes imposed under Title 36, Parts 3 and 8, and Title 36,  
8 section 2552, subsection 1, paragraphs A to F ~~and L, and N~~, and credited to the General  
9 Fund without any reduction, except that for fiscal years 2015-16, 2016-17, 2017-18 and  
10 2018-19 the amount transferred is 2%, for fiscal year 2019-20 the amount transferred is  
11 3% and for fiscal year 2020-21 the amount transferred is 3.75% of the receipts during the  
12 previous month from the taxes imposed under Title 36, Parts 3 and 8, and Title 36,  
13 section 2552, subsection 1, paragraphs A to F ~~and L, and N~~, and credited to the General  
14 Fund without any reduction, and except that the postage, state cost allocation program  
15 and programming costs of administering state-municipal revenue sharing may be paid by  
16 the Local Government Fund. A percentage share of the amounts transferred to the Local  
17 Government Fund each month must be transferred to the Disproportionate Tax Burden  
18 Fund and distributed pursuant to subsection 4-B as follows:

19 C. For months beginning on or after July 1, 2009 but before July 1, 2010, 15%;

20 D. For months beginning on or after July 1, 2010 but before July 1, 2011, 16%;

21 E. For months beginning on or after July 1, 2011 but before July 1, 2012, 17%;

22 F. For months beginning on or after July 1, 2012 but before July 1, 2013, 18%;

23 G. For months beginning on or after July 1, 2013 but before July 1, 2014, 19%; and

24 H. For months beginning on or after July 1, 2014, 20%.

25 **Sec. A-2. 36 MRSA §2551, sub-§2-B** is enacted to read:

26 **2-B. Digital audio-visual and digital audio services.** "Digital audio-visual and  
27 digital audio services" means the electronic transfer of digital audio-visual works and  
28 digital audio works with the right of less than permanent use granted by the seller,  
29 including when conditioned upon continued payment from the purchaser or a  
30 subscription. For purposes of this subsection, "permanent" means perpetual or for an  
31 indefinite or unspecified length of time and "subscription" means an agreement with a  
32 seller that grants a purchaser the right to obtain products transferred electronically, in a  
33 fixed quantity or for a fixed period of time, or both.

34 **Sec. A-3. 36 MRSA §2551, sub-§2-C** is enacted to read:

35 **2-C. Digital audio-visual works.** "Digital audio-visual works" means a series of  
36 related images that, when shown in succession, impart an impression of motion, together  
37 with accompanying sounds, if any.

38 **Sec. A-4. 36 MRSA §2551, sub-§2-D** is enacted to read:

1           **2-D. Digital audio works.** "Digital audio works" means works that result from the  
2 fixation of a series of musical, spoken or other sounds, including ringtones. For purposes  
3 of this subsection, "ringtones" means digitized sound files that are downloaded onto a  
4 device and that may be used to alert the purchaser with respect to a communication.

5           **Sec. A-5. 36 MRSA §2552, sub-§1, ¶L,** as amended by PL 2013, c. 368, Pt.  
6 OOOO, §3, is further amended to read:

7           L. Ancillary services; ~~and~~

8           **Sec. A-6. 36 MRSA §2552, sub-§1, ¶M,** as enacted by PL 2013, c. 368, Pt.  
9 OOOO, §4, is amended to read:

10           M. Group residential services for persons with brain injuries; ~~and~~

11           **Sec. A-7. 36 MRSA §2552, sub-§1, ¶N** is enacted to read:

12           N. Digital audio-visual and digital audio services.

13           **Sec. A-8. 36 MRSA §2556-A** is enacted to read:

14           **§2556-A. Sourcing for sales of digital audio-visual and digital audio services**

15           The sale of digital audio-visual and digital audio services is sourced in this State  
16 pursuant to this section.

17           **1. First use by purchaser at business location of seller.** When the first use of the  
18 service is made by the purchaser at a business location of the seller, the sale is sourced to  
19 that business location.

20           **2. First use by purchaser at location other than business location of seller.**  
21 When the first use of the service is not made by the purchaser at a business location of the  
22 seller, the sale is sourced to the location where the first use by the purchaser or the  
23 purchaser's donee is made, including the location indicated by instructions for delivery to  
24 the purchaser or donee known to the seller.

25           **3. Sourced to address of purchaser in seller's business records.** For a sale when  
26 subsections 1 and 2 do not apply, the sale is sourced to the location indicated by an  
27 address for the purchaser that is available from the business records of the seller that are  
28 maintained in the ordinary course of the seller's business when use of this address does  
29 not constitute bad faith.

30           **4. Sourced to address of purchaser not in seller's business records.** For a sale  
31 when subsections 1 to 3 do not apply, the sale is sourced to the location indicated by an  
32 address for the purchaser obtained during the consummation of the sale, including the  
33 address of a purchaser's payment instrument, if no other address is available, when use of  
34 this address does not constitute bad faith.

35           **5. Sourced to address from which service provided.** When subsections 1 to 4 do  
36 not apply, including the circumstance in which the seller is without sufficient information  
37 to apply subsections 1 to 4, the location is determined by the address from which the

1 service was provided, disregarding for these purposes any location that merely provided  
2 the digital transfer of the product sold.

3 **Sec. A-9. 36 MRSA §2559**, as amended by PL 2015, c. 300, Pt. A, §35, is further  
4 amended to read:

5 **§2559. Application of revenues**

6 Revenues derived by the tax imposed by this chapter must be credited to a General  
7 Fund suspense account. On or before the last day of each month, the State Controller  
8 shall transfer a percentage of the revenues received by the State Tax Assessor during the  
9 preceding month pursuant to the tax imposed by section 2552, subsection 1, paragraphs A  
10 to F ~~and L and N~~ to the Local Government Fund as provided by Title 30-A, section 5681,  
11 subsection 5. The balance remaining in the General Fund suspense account must be  
12 transferred to service provider tax General Fund revenue. On or before the 15th day of  
13 each month, the State Controller shall transfer all revenues received by the assessor  
14 during the preceding month pursuant to the tax imposed by section 2552, subsection 1,  
15 paragraphs G to J and M to the Medical Care Services Other Special Revenue Funds  
16 account, the Other Special Revenue Funds Mental Health Services - Community  
17 Medicaid program, the Medicaid Services - Adult Developmental Services program and  
18 the Office of Substance Abuse - Medicaid Seed program within the Department of Health  
19 and Human Services.

20 **Sec. A-10. Application date.** This Part applies to sales occurring on or after  
21 October 1, 2020.

22 **PART B**

23 **Sec. B-1. 36 MRSA §5102, sub-§10**, as amended by PL 2011, c. 655, Pt. QQ, §4  
24 and affected by §8, is further amended to read:

25 **10. Taxable corporation.** "Taxable corporation" means, for any taxable year, a  
26 corporation that has substantial nexus with this State pursuant to section 5200-B,  
27 including any corporation with income subject to federal tax under the Code, Section  
28 1374 or 1375, and that has, at any time during that taxable year, realized Maine net  
29 income ~~and includes any S corporation with realized Maine net income that is subject to~~  
30 federal tax under the Code, Section 1374 and 1375.

31 **Sec. B-2. 36 MRSA §5200-B** is enacted to read:

32 **§5200-B. Corporate income tax nexus**

33 **1. Nexus established.** A corporation has substantial nexus with this State, for the  
34 purposes of the tax imposed under section 5200, if that corporation:

35 A. Is organized or commercially domiciled in this State; or

36 B. Is organized or commercially domiciled outside this State, if the corporation's  
37 property, payroll or sales in this State, as defined in subsection 2, exceed any of the  
38 following thresholds for the taxable year:

1           (1) For property, \$250,000;

2           (2) For payroll, \$250,000;

3           (3) For sales, \$500,000; or

4           (4) Twenty-five percent of the corporation's property, payroll or sales.

5           **2. Property, payroll and sales defined; calculation.** For purposes of this section,  
6 property, payroll and sales are calculated as provided under chapter 821 and associated  
7 rules adopted by the assessor, except that the sales calculation does not exclude sales of  
8 tangible personal property under section 5211, subsection 14, paragraph B. For a taxpayer  
9 permitted or required to use a special apportionment method under section 5211,  
10 subsection 17, the property, payroll and sales used to determine nexus under this section  
11 must be consistent with the property, payroll and sales used for the special apportionment  
12 method.

13           **3. Corporate partners.** A corporation that holds an interest directly or indirectly in  
14 a partnership has substantial nexus with this State if the partnership is organized or  
15 commercially domiciled in this State or if the partnership's property, payroll or sales in  
16 this State, as defined in subsection 2, exceed any of the thresholds in subsection 1,  
17 paragraph B.

18           **Sec. B-3. 36 MRSA §5211, sub-§14,** as amended by PL 2009, c. 571, Pt. GG, §1  
19 and affected by §2, is further amended to read:

20           **14. Sales factor formula.** The sales factor is a fraction, the numerator of which is  
21 the total sales of the taxpayer in this State during the tax period, and the denominator of  
22 which is the total sales of the taxpayer everywhere during the tax period. ~~For purposes of~~  
23 ~~calculating the sales factor, "total sales of the taxpayer" includes sales of the taxpayer and~~  
24 ~~of any member of an affiliated group with which the taxpayer conducts a unitary~~  
25 ~~business. The formula must exclude from both the numerator and the denominator sales~~  
26 ~~of tangible personal property delivered or shipped by the taxpayer, regardless of F.O.B.~~  
27 ~~point or other conditions of the sale, to a purchaser within a state in which the taxpayer is~~  
28 ~~not taxable within the meaning of subsection 2, unless any member of an affiliated group~~  
29 ~~with which the taxpayer conducts a unitary business is taxable in that state in the same~~  
30 ~~manner as a taxpayer is taxable under subsection 2.~~

31           A. For purposes of calculating the sales factor, "total sales of the taxpayer" includes  
32 sales of the taxpayer and of any member of an affiliated group with which the  
33 taxpayer conducts a unitary business.

34           B. The sales factor formula must exclude from both the numerator and the  
35 denominator sales of tangible personal property delivered or shipped by the taxpayer,  
36 regardless of F.O.B. point or other conditions of the sale, to a purchaser within a state  
37 in which the taxpayer is not taxable within the meaning of subsection 2, unless any  
38 member of an affiliated group with which the taxpayer conducts a unitary business is  
39 taxable in that state in the same manner as a taxpayer is taxable under subsection 2.

40           **Sec. B-4. Application.** This Part applies to tax years beginning on or after  
41 January 1, 2021.

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**PART C**

**Sec. C-1. 36 MRSA §5403, sub-§1**, as enacted by PL 2015, c. 267, Pt. DD, §33, is amended to read:

**1. Individual income tax rate tables.** ~~For the tax rate tables in section 5111: Beginning in 2020 and each year thereafter, by the dollar amounts of the tax rate tables specified in section 5111, subsections 1-F, 2-F and 3-F, except that for the purposes of this subsection, notwithstanding section 5402, subsection 1-B, the "cost-of-living adjustment" is the Chained Consumer Price Index for the 12-month period ending June 30th of the preceding calendar year divided by the Chained Consumer Price Index for the 12-month period ending June 30, 2015;~~

~~A. Beginning in 2016 and each year thereafter, by the lowest dollar amounts of the tax rate tables specified in section 5111, subsections 1-F, 2-F and 3-F, except that for the purposes of this paragraph, notwithstanding section 5402, subsection 1-B, the "cost-of-living adjustment" is the Chained Consumer Price Index for the 12-month period ending June 30th of the preceding calendar year divided by the Chained Consumer Price Index for the 12-month period ending June 30, 2015; and~~

~~B. Beginning in 2017 and each year thereafter, by the highest taxable income dollar amount of each tax rate table, except that for the purposes of this paragraph, notwithstanding section 5402, subsection 1-B, the "cost-of-living adjustment" is the Chained Consumer Price Index for the 12-month period ending June 30th of the preceding calendar year divided by the Chained Consumer Price Index for the 12-month period ending June 30, 2016;~~

**Sec. C-2. 36 MRSA §5403, sub-§7**, as enacted by PL 2017, c. 474, Pt. B, §24, is amended to read:

**7. Personal exemptions.** Beginning in 2018 and each year thereafter, by the dollar amounts contained in section 5126-A, subsection 1, except that for the purposes of this subsection, notwithstanding section 5402, subsection 1-B, the "cost-of-living adjustment" is the Chained Consumer Price Index for the 12-month period ending June 30th of the preceding calendar year divided by the Chained Consumer Price Index for the 12-month period ending June 30, 2017; ~~and~~

**Sec. C-3. 36 MRSA §5403, sub-§8**, as enacted by PL 2017, c. 474, Pt. B, §24, is amended to read:

**8. Personal exemption phase-out.** Beginning in 2018 and each year thereafter, by the dollar amount of the applicable amounts specified in section 5126-A, subsection 2, paragraphs A, B and C, except that for the purposes of this subsection, notwithstanding section 5402, subsection 1-B, the "cost-of-living adjustment" is the Chained Consumer Price Index for the 12-month period ending June 30th of the preceding calendar year divided by the Chained Consumer Price Index for the 12-month period ending June 30, 2017;:

**Sec. C-4. 36 MRSA §5403, sub-§9** is enacted to read:





1 Part A updates, clarifies and simplifies the service provider tax law regarding  
2 consumer purchases of digital media by equalizing the tax treatment between the various  
3 modes of purchase for sales occurring on or after October 1, 2020.

4 Part B clarifies and simplifies the corporate income tax law by establishing clearly  
5 defined, objective nexus thresholds as a practical structure for the current general  
6 "economic nexus" standard. These so-called factor presence thresholds clarify the  
7 minimum thresholds that, when exceeded by a corporation, subject that corporation to the  
8 Maine corporate income tax. In addition, the new thresholds create a safe harbor for  
9 corporations with little activity within the State that nonetheless have nexus under current  
10 law due to a small, but greater than de minimis, physical presence in the State. The new  
11 thresholds are \$250,000 of property, \$250,000 in payroll or \$500,000 in sales in Maine,  
12 or 25% of total property, payroll or sales in Maine, as determined under the Maine  
13 Revised Statutes, Title 36, chapter 821. The thresholds apply to tax years beginning on or  
14 after January 1, 2021.

15 Part C updates the individual income tax law by extending and aligning inflation  
16 indexing provisions in 2 respects. First, the bill indexes the recently enacted dependent  
17 exemption tax credit for inflation. Second, the bill aligns inflation indexing for the lowest  
18 income tax brackets and the highest income tax brackets by allowing an additional one-  
19 year inflation adjustment for the highest income tax bracket, indexing the dollar amounts  
20 to the same inflation benchmark, the Chained Consumer Price Index for the 12-month  
21 period ending June 30, 2015. These changes apply to tax years beginning on or after  
22 January 1, 2021.

23 Part D updates and simplifies Maine income tax law by conforming the Maine  
24 income tax with the federal net operating loss limitation. This Part applies retroactively  
25 to tax years beginning on or after January 1, 2018.