

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 electronic originals
(may include minor formatting differences from printed original)



131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1891

H.P. 1212

House of Representatives, May 4, 2023

**An Act to Support Maine Businesses Through a Child Care Tax
Credit and a Pass-through Entity Tax**

Reference to the Committee on Taxation suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative TERRY of Gorham.
Cosponsored by President JACKSON of Aroostook and
Representatives: CLOUTIER of Lewiston, DUCHARME of Madison, EATON of Deer Isle,
MILLETT of Waterford, MILLIKEN of Blue Hill, PERRY of Bangor, SACHS of Freeport.

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

2 **PART A**

3 **Sec. A-1. 36 MRSA c. 814-A** is enacted to read:

4 **CHAPTER 814-A**

5 **PASS-THROUGH ENTITY TAX**

6 **§5186. Definitions**

7 As used in this chapter, unless the context otherwise indicates, the following terms
8 have the following meanings.

9 **1. Affected business entity.** "Affected business entity" means a partnership or an S
10 corporation, but does not include a publicly traded partnership, as defined in the Code,
11 Section 7704(b), that has agreed to file an annual return pursuant to section 5187 reporting
12 the name, address, social security number or federal employer identification number and
13 such other information required by the assessor of each member whose distributive share
14 of partnership income derived from or connected with sources within this State is more
15 than \$500.

16 **2. Electing pass-through entity.** "Electing pass-through entity" means a pass-through
17 entity that elects to pay taxes pursuant to section 5187.

18 **3. Member.** "Member" means:

19 A. A shareholder of an S corporation;

20 B. A partner in:

21 (1) A general partnership;

22 (2) A limited partnership; or

23 (3) A limited liability partnership; or

24 C. A member of a limited liability company that is treated as a partnership or an S
25 corporation for federal income tax purposes.

26 **4. Partnership.** "Partnership" has the same meaning as in the Code, Section
27 7701(a)(2) and regulations adopted thereunder. "Partnership" includes a limited liability
28 company that is treated as a partnership for federal income tax purposes.

29 **5. Pass-through entity.** "Pass-through entity" has the same meaning as in section
30 5195, subsection 18.

31 **6. S corporation.** "S corporation" means a corporation or a limited liability company
32 that is treated as an S corporation for federal income tax purposes.

33 **7. Tax year.** "Tax year" means the tax year of an affected business entity for federal
34 income tax purposes.

35 **§5187. Pass-through entity taxation election**

1 **1. Election.** A partnership or S corporation may elect to become an electing pass-
2 through entity in a tax year. A separate election must be made for each tax year.

3 **2. Imposition and calculation of tax.** Notwithstanding any provision of law to the
4 contrary, a tax is imposed on an electing pass-through entity. The tax is the sum of each
5 member's distributive share of Maine taxable income as calculated under this Part,
6 multiplied by the highest rate of tax applicable to the individual under section 5111.

7 **3. Carry-forward.** If the tax calculated pursuant to subsection 2 results in a net loss
8 for the electing pass-through entity, the net loss may not be carried forward to subsequent
9 tax years.

10 **4. Filing of return.** A nonresident individual who is a member of an electing pass-
11 through entity may not be required to file an income tax return pursuant to this chapter for
12 a tax year if the member's only source of Maine income for that tax year is from an electing
13 pass-through entity and the electing pass-through entity files and pays the tax due under
14 this chapter.

15 **5. Report of pro rata share.** Each electing pass-through entity shall report to each of
16 its members, for each tax year, the member's pro rata share of the tax imposed pursuant to
17 this chapter.

18 **6. Report of credit.** A subsidiary pass-through entity shall report to a parent electing
19 pass-through entity the amount of the credit the subsidiary allocates to the parent electing
20 pass-through entity.

21 **7. Treatment of indirect credit.** A parent electing pass-through entity cannot claim
22 the credit against the pass-through entity tax reported on its own return but shall flow
23 through the indirect credit to its members.

24 **8. Amount of credit.** Each member of an electing pass-through entity is entitled to a
25 credit equal to 90% of the member's share of the tax paid pursuant to this chapter. If the
26 amount of the credit authorized by this subsection exceeds the member's tax liability
27 imposed pursuant to this chapter, the excess amount is refundable to the member. A
28 member claiming a credit pursuant to this subsection is not entitled to deduct from that
29 member's Maine taxable income those amounts of Maine income taxes paid by the member
30 on that member's distributive share of income from the electing pass-through entity.

31 **9. Effect of taxes paid in and credit from other jurisdictions.** Each member that is
32 subject to the tax imposed by this chapter as a resident or part-year resident of the State is
33 entitled to a credit for the direct member's or indirect member's pro rata share of taxes paid
34 to another state or to the District of Columbia on income of any partnership or S corporation
35 of which the person is a member if the taxes paid to another state or to the District of
36 Columbia result from a tax that the director of taxation for that state or the District of
37 Columbia determines is substantially similar to the tax imposed pursuant to this chapter.
38 A credit must be calculated in a form and manner prescribed by that director of taxation
39 consistent with the provisions of this section. If the amount of the credit authorized by this
40 subsection exceeds the member's tax liability for the tax imposed pursuant to this chapter,
41 the excess amount is not refundable and may not carry forward.

42 **10. Timing.** Each affected business entity that is required to file a return under this
43 chapter shall pay, on or before the 15th day of the 3rd month following the close of each
44 tax year, to the assessor the tax as determined under this chapter.

1 **§5188. Rules**

2 The bureau may adopt rules to implement this chapter. Rules adopted pursuant to this
3 section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

4 **Sec. A-2. 36 MRSA §5190**, as amended by PL 2019, c. 380, §1, is further amended
5 to read:

6 **§5190. Entity not taxable**

7 A partnership is not subject to the tax imposed by this Part except as provided in chapter
8 814-A. Persons carrying on business as partners are liable for the tax imposed by this Part
9 only in their separate or individual capacities. This section does not apply to the taxes
10 imposed by chapters 819 and 827 or the tax imposed on partnership audit adjustments
11 pursuant to subchapter 2.

12 **PART B**

13 **Sec. B-1. 36 MRSA §5217-G** is enacted to read:

14 **§5217-G. Business-supported child care tax credit**

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

17 A. "Employing unit" has the same meaning as in Title 26, section 1043.

18 B. "Providing child care services" means:

19 (1) Expending funds to build, furnish, license, staff, operate or subsidize a child
20 care facility, as defined in Title 22, section 8301, subsection 1-A, paragraph B, to
21 provide early child care and education services to children of employees of the
22 employing unit at no profit to the employing unit;

23 (2) Expending funds to contract with a child care facility licensed by or registered
24 with the department to provide early child care and education services to children
25 of the employees of the employing unit;

26 (3) The provision of child care resource and referral services to employees; or

27 (4) Payments by the employing unit to an employee for purposes of paying for
28 early child care and education services for children of the employee under a
29 dependent care assistance plan.

30 **2. Credit allowed.** For tax years beginning on or after January 1, 2023, a taxpayer
31 constituting an employing unit is allowed a credit against the tax imposed by this Part for
32 each tax year equal to the lower of:

33 A. Ten thousand dollars; and

34 B. One thousand dollars for each child of an employee of the taxpayer for whom the
35 taxpayer provides child care services.

36 **3. Carryover.** The amount of the credit that may be used by a taxpayer for a tax year
37 may not exceed the amount of tax otherwise due under this Part. Any unused credit may
38 be carried over to the following year or years for a period not to exceed 15 years. The
39 credit allowed under this section may not be carried back.

1 **SUMMARY**

2 Part A of this bill establishes a pass-through entity tax on the income of partners and
3 shareholders of S corporations to permit certain entities to elect to pay Maine income tax
4 at the entity level. The effect of this is to allow a taxpayer who elects to become a pass-
5 through entity to deduct Maine income taxes paid on the taxpayer's federal income tax
6 return.

7 Part B of this bill establishes a business-supported child care tax credit to provide to an
8 employer that provides early child care and education services to children of its employees,
9 either by expending funds to build, furnish, license, staff, operate or subsidize a child care
10 facility licensed by the Department of Health and Human Services or to contract with a
11 child care facility licensed by or registered with the department. The credit is equal to the
12 lower of \$10,000 or \$1,000 per child of an employee for whom the employer provides early
13 child care and education services.