

# MAINE STATE LEGISLATURE

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Date

6/20/23

(Filing No H- 6/0)

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## TAXATION

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### STATE OF MAINE

6

### HOUSE OF REPRESENTATIVES

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### 131ST LEGISLATURE

8

### FIRST SPECIAL SESSION

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COMMITTEE AMENDMENT "A" to H P 1260, L D 1958, "An Act to Provide the Mi'kmaq Nation with Sales Tax Revenue for Sales Occurring on Mi'kmaq Nation Territory"

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Amend the bill by striking out the title and substituting the following

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**'An Act to Revise the Tax Laws Regarding the Mi'kmaq Nation'**

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Amend the bill by striking out everything after the enacting clause and inserting the following

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#### PART A

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**Sec. A-1. Legislative findings and purpose.** The Legislature finds and declares that the changes to the State's tax laws that appear in Parts B to G of this Act will

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1 Improve the economic opportunities available to and the welfare of the Mi'kmaq Nation and its members,

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2 Encourage economic development within the lands of the Mi'kmaq Nation, the benefits of which will accrue not only to the nation and its members but also to surrounding communities and the State, and

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3 Clarify and simplify the application of the State's tax laws to the Mi'kmaq Nation as well as to its lands and members, in order to reduce the costs of tax compliance to the nation and its members and to reduce the cost to the State of administering its tax laws

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#### PART B

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**Sec. B-1. 36 MRSA §111, sub-§1-F** is enacted to read

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**1-F. Mi'kmaq Nation.** "Mi'kmaq Nation" means the sole successor to the Mi'kmaq Nation as constituted in aboriginal times in what is now the State, and all its predecessors and successors in interest. The Mi'kmaq Nation is represented, as of the date of enactment of this subsection, as to lands within the United States by the Mi'kmaq Tribal Council. This definition has the same meaning as under Section 3(1) of the federal Aroostook Band of Micmacs Settlement Act (1991).

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# COMMITTEE AMENDMENT

1           **Sec. B-2. 36 MRSA §111, sub-§1-G** is enacted to read

2           **1-G. Mi'kmaq Nation Trust Land.** "Mi'kmaq Nation Trust Land" means land or  
3 natural resources acquired by the United States Secretary of the Interior in trust for the  
4 Mi'kmaq Nation pursuant to federal legislation concerning the Mi'kmaq Nation and has the  
5 same meaning as under Section 3(3) of the federal Aroostook Band of Micmacs Settlement  
6 Act (1991).

7           **Sec. B-3. 36 MRSA §111, sub-§8,** as enacted by PL 2021, c 681, Pt C, §7, is  
8 amended to read

9           **8. Tribal entity.** "Tribal entity" means a business entity

10           A Wholly owned by the Houlton Band of Maliseet Indians, the Mi'kmaq Nation, the  
11 Passamaquoddy Tribe, the Penobscot Nation, a tribal member or tribal members or  
12 some combination thereof For purposes of determining ownership of an entity, a  
13 married couple including at least one tribal member is treated as one tribal member,  
14 regardless of which spouse owns the entity, or

15           B ~~Where~~ When 75% of the ownership interests are held in aggregate by the Houlton  
16 Band of Maliseet Indians, the Mi'kmaq Nation, the Passamaquoddy Tribe or the  
17 Penobscot Nation and the entity is controlled and managed by the Houlton Band of  
18 Maliseet Indians, the Mi'kmaq Nation, the Passamaquoddy Tribe or the Penobscot  
19 Nation, consistent with the requirements of 13 Code of Federal Regulations, Section  
20 124 109(c)(4), as determined by the federal Small Business Administration or the  
21 assessor as consistent with 13 Code of Federal Regulations, Section  
22 124 109(c)(4)(i)(A), or as determined by the federal Small Business Administration as  
23 consistent with 13 Code of Federal Regulations, Section 124 109(c)(4)(i)(B)

24           A tribal entity must be a separate and distinct legal entity organized or chartered by federal,  
25 state or tribal authorities

26           **Sec. B-4. 36 MRSA §111, sub-§9,** as enacted by PL 2021, c 681, Pt C, §8, is  
27 amended to read

28           **9. Tribal land.** "Tribal land" means land within the Houlton Band Trust Land, the  
29 Mi'kmaq Nation Trust Land, the Passamaquoddy Indian territory or the Penobscot Indian  
30 territory

31           **Sec. B-5. 36 MRSA §111, sub-§10,** as enacted by PL 2021, c 681, Pt C, §9, is  
32 amended to read

33           **10. Tribal member.** "Tribal member" means an enrolled member of the Houlton  
34 Band of Maliseet Indians, the Mi'kmaq Nation, the Passamaquoddy Tribe or the Penobscot  
35 Nation

36           **Sec. B-6. 36 MRSA §194-E,** as enacted by PL 2021, c 681, Pt C, §10, is amended  
37 to read

38           **§194-E. Tribes deemed as acting in a governmental capacity**

39           For purposes of Parts 3 and 8 of this Title, the Passamaquoddy Tribe and the Penobscot  
40 Nation are deemed to act in a governmental capacity as described in Title 30, section 6208,  
41 subsection 3 and not in a business capacity For purposes of Parts 3 and 8 of this Title, the

1 Houlton Band of Maliseet Indians ~~is~~ and the Mi'kmaq Nation are deemed to act in a  
2 governmental capacity and not in a business capacity

3 **Sec. B-7. Application.** For the purposes of the Maine Revised Statutes, Title 36,  
4 Part 3, this Part applies to sales occurring on or after January 1, 2024 For purposes of Title  
5 36, Part 8, this Part applies to tax years beginning on or after January 1, 2024

6 **PART C**

7 **Sec. C-1. 36 MRSA §1760, sub-§112,** as enacted by PL 2021, c 681, Pt D, §1, is  
8 amended to read

9 **112. Tribes.** Sales to the Houlton Band of Maliseet Indians, the Mi'kmaq Nation, the  
10 Passamaquoddy Tribe or the Penobscot Nation For purposes of section 1760-C, sales to  
11 the tribes identified in this subsection for any purpose are exempt

12 **Sec. C-2. Application.** This Part applies to sales occurring on or after January 1,  
13 2024

14 **PART D**

15 **Sec. D-1. 36 MRSA §191, sub-§2, ¶QQQ,** as enacted by PL 2021, c 681, Pt E,  
16 §1, is amended to read

17 QQQ The disclosure of information to the Houlton Band of Maliseet Indians, the  
18 Mi'kmaq Nation, the Passamaquoddy Tribe or the Penobscot Nation necessary for the  
19 administration of sales tax revenue transfers under section 1815

20 **Sec. D-2. 36 MRSA §1815, sub-§1-C** is enacted to read.

21 **1-C. Mi'kmaq Sales Tax Fund.** The Mi'kmaq Sales Tax Fund, referred to in this  
22 section as "the Mi'kmaq fund," is established as a dedicated account to be administered by  
23 the Treasurer of the State for the purpose of returning sales tax revenue to the Mi'kmaq  
24 Nation pursuant to subsections 2 and 3

25 **Sec. D-3. 36 MRSA §1815, sub-§2,** as amended by PL 2021, c 681, Pt E, §2, is  
26 further amended to read

27 **2. Monthly transfer.** By the 20th day of each month, the assessor shall notify the  
28 State Controller and the Treasurer of State of the amount of revenue attributable to the tax  
29 collected under this chapter in the previous month on sales occurring on the  
30 Passamaquoddy Indian territory, the Penobscot Indian territory ~~and~~, the Houlton Band  
31 Trust Land and the Mi'kmaq Nation Trust Land, respectively, reduced by the transfer to the  
32 Local Government Fund required by Title 30-A, section 5681 When notified by the  
33 assessor, the State Controller shall transfer those amounts to the Passamaquoddy fund, the  
34 Penobscot fund ~~and~~, the Maliseet fund and the Mi'kmaq fund, respectively

35 For purposes of this subsection, a sale occurs on the Passamaquoddy Indian territory, the  
36 Penobscot Indian territory ~~or~~, the Houlton Band Trust Land or the Mi'kmaq Nation Trust  
37 Land if

38 A The business location of the seller from which the purchase is made is on  
39 Passamaquoddy Indian territory, Penobscot Indian territory ~~or~~, Houlton Band Trust  
40 Land or Mi'kmaq Nation Trust Land, respectively, and

1 B The tangible personal property or taxable service is received by the purchaser also  
 2 on Passamaquoddy Indian territory, Penobscot Indian territory ~~or~~, Houlton Band Trust  
 3 Land or Mi'kmaq Nation Trust Land, respectively For purposes of this paragraph,  
 4 "received" has the same meaning as in section 1819

5 **Sec. D-4. 36 MRSA §1815, sub-§3**, as amended by PL 2021, c 681, Pt E, §2, is  
 6 further amended to read

7 **3. Monthly payment.** By the end of each month, the Treasurer of State shall make  
 8 payments to the Passamaquoddy Tribe from the Passamaquoddy fund, to the Penobscot  
 9 Nation from the Penobscot fund ~~and~~, to the Houlton Band of Maliseet Indians from the  
 10 Maliseet fund and to the Mi'kmaq Nation from the Mi'kmaq fund equal to the amounts  
 11 transferred into the respective fund

12 **Sec. D-5. 36 MRSA §1815, sub-§4**, as enacted by PL 2021, c 681, Pt E, §2, is  
 13 amended to read

14 **4. Quarterly reconciliation.** The monthly payments due under this section must be  
 15 adjusted by any credit or debit necessary for a quarterly reconciliation of payments and  
 16 transfers made under this section for any erroneous payment or transfers ~~and~~, any erroneous  
 17 collection and corresponding refund and by any subsequent assessment, remittance or  
 18 refund of sales tax to or by the State

19 **Sec. D-6. Application.** This Part applies to sales occurring on or after January 1,  
 20 2024

21 **PART E**

22 **Sec. E-1. 36 MRSA §5102, sub-§6**, as amended by PL 2021, c 681, Pt G, §2, is  
 23 further amended by amending the last paragraph to read

24 "Corporation" does not include the Passamaquoddy Tribe, the Penobscot Nation, the  
 25 Houlton Band of Maliseet Indians, the Mi'kmaq Nation or a corporation organized by the  
 26 Passamaquoddy Tribe, the Penobscot Nation ~~or~~, the Houlton Band of Maliseet Indians or  
 27 the Mi'kmaq Nation under Section 17 of the federal Indian Reorganization Act, 25 United  
 28 States Code, Section 5124

29 **Sec. E-2. Application.** This Part applies to tax years beginning on or after January  
 30 1, 2024

31 **PART F**

32 **Sec. F-1. Rulemaking.** The Department of Administrative and Financial Services,  
 33 Bureau of Revenue Services may adopt rules to implement Parts A, B, C, D and E Rules  
 34 adopted under this section may include, but are not limited to, rules specifying reporting  
 35 requirements and the maintenance by the Mi'kmaq Nation and provision to the bureau of  
 36 lists of the tribe's tribal land, tribal members, tribal entities and corporations organized  
 37 under 25 United States Code, Section 5124 Rules adopted pursuant to this section are  
 38 routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375,  
 39 subchapter 2-A

40 **PART G**

1       **Sec. G-1. Appropriations and allocations.** The following appropriations and  
2 allocations are made

3       **TREASURER OF STATE, OFFICE OF**  
4       **Mi'kmaq Sales Tax Fund N474**

5 Initiative Establishes the Mi'kmaq Sales Tax Fund to collect and remit sales tax collected  
6 on Mi'kmaq Nation Trust Land

7 <b>OTHER SPECIAL REVENUE FUNDS</b>	8 <b>2023-24</b>	9 <b>2024-25</b>
10        All Other	\$500	\$500
11 <b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	\$500	\$500

12        Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
13 number to read consecutively

14                               **SUMMARY**

15        This amendment replaces the bill and changes the title. It establishes tax treatment for  
16 the Mi'kmaq Nation that is equal to the treatment of other tribal entities by the State as  
17 provided in Public Law 2021, chapter 681

18                               **FISCAL NOTE REQUIRED**  
19                               **(See attached)**



# 131st MAINE LEGISLATURE

LD 1958

LR 2541(02)

## An Act to Provide the Mi'kmaq Nation with Sales Tax Revenue for Sales Occurring on Mi'kmaq Nation Territory

Fiscal Note for Bill as Amended by Committee Amendment *A (H-610)*

Committee: Taxation

Fiscal Note Required: Yes

### Fiscal Note

	FY 2023-24	FY 2024-25	Projections FY 2025-26	Projections FY 2026-27
<b>Net Cost (Savings)</b>				
General Fund	\$4,750	\$16,625	\$22,325	\$23,275
<b>Appropriations/Allocations</b>				
Other Special Revenue Funds	\$500	\$500	\$500	\$500
<b>Revenue</b>				
General Fund	(\$4,750)	(\$16,625)	(\$22,325)	(\$23,275)
Other Special Revenue Funds	(\$250)	(\$875)	(\$1,175)	(\$1,225)

#### Fiscal Detail and Notes

Revising the tax laws to provide tax treatment for the Mi'kmaq Nation equal to treatment of other tribal entities by the State will decrease General Fund revenue by \$4,750 in fiscal year 2023-24 and \$16,625 in fiscal year 2024-25 and will decrease Local Government Fund revenue by \$250 in fiscal year 2023-24 and \$875 in fiscal year 2024-25

The bill also establishes the Mi'kmaq Sales Tax Fund to collect and remit sales tax collected on Mi'kmaq Nation Trust Land, with a base Other Special Revenue Funds allocation of \$500 beginning in fiscal year 2023-24