

# 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 scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

---

---

N I N E T Y - F I F T H   L E G I S L A T U R E

---

---

**Legislative Document**

**No. 602**

H. P. 1031

House of Representatives, February 9, 1951

Referred to the Committee on Taxation, sent up for concurrence and 1500 copies ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Cole of Liberty.

---

---

STATE OF MAINE

---

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FIFTY-ONE

---

**AN ACT Proposing an Additional Corporate Franchise Tax.**

---

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

Sec. 1. R. S., c. 14, §§ 348-362, additional. Chapter 14 of the revised statutes, as amended, is hereby further amended by adding thereto 14 new sections to be numbered 348 to 362, inclusive, to read as follows:

**‘Additional Corporate Franchise Tax**

Sec. 348. Definitions. For the purposes of sections 348 to 362, inclusive, and unless the context requires otherwise:

I. “Corporation” includes a joint stock company or association wherein interest or ownership is evidenced by certificate or other written instrument;

II. “Doing business” means any transaction or transactions in the course of its business by a corporation taxable hereunder created under the laws of this state, or by a foreign corporation qualified to do or doing business in this state;

III. “Fiscal year” means the income year ending on the last day of any month other than December;

IV. "Franchise tax" means a tax on every domestic corporation for the privilege of exercising its franchise in this state in a corporate or organized capacity, and a tax on every foreign corporation for the privilege of doing business in this state, taxable under sections 348 to 362, inclusive, measured by or according to the net income of such corporation;

V. "Income year" means the calendar year or the fiscal year upon the basis of which the net income is computed under sections 348 to 362, inclusive; if no fiscal year has been established, the term means the calendar year;

VI. "Net income" means the total net income for the income year, as defined under the internal revenue code of the United States as existing on the effective date of sections 348 to 362, inclusive, without deductions for losses sustained by the corporation in prior years;

VII. "Taxpayer" includes every manufacturing, mercantile, business or holding corporation subject to the tax imposed by sections 348 to 362, inclusive;

VIII. "Tax year" means the calendar year in which the tax is payable.

Sec. 349. Franchise tax imposed. For the privilege of exercising its franchise in this state in a corporate or organized capacity, every domestic corporation, and for the privilege of doing business in this state every foreign corporation, liable to tax under sections 348 to 362, inclusive, shall annually pay to this state a franchise tax to be measured by its net income to be computed in the manner hereinafter provided at the rate of 4% upon the basis of its net income as herein computed, for the next preceding income year; provided, however, that the tax paid by any corporation in any year under the provisions of sections 102 to 108, inclusive, shall be allowed as a credit toward any tax liability of the corporation under sections 348 to 362 for the income year in which such tax was paid.

Sec. 350. Allocation of income. If the entire business of the corporation is transacted within the state, the tax imposed shall be measured by the entire net income of the corporation for the income year. If the entire business of the corporation is not transacted within the state and its gross income is derived from business done both within and without the state, the tax imposed shall be measured by the net income of the corporation for the income year from business done within the state. Such net income shall be apportioned so as to allocate to the state a fair and equitable proportion of such income. Such allocation shall be made normally on the basis of the following factors, equal weight to be given to each:

- I. The average of the value of all the real and tangible personal property,
  - A. at the beginning of the income year and
  - B. at the end of the income year, within the state, expressed as a percentage of all such property both within and without the state;
- II. The total wages, salaries and other personal service compensation paid during the income year, to employees within the state, expressed as a percentage of all such compensation paid whether within or without the state;
- III. The gross sales, or charges for services performed, within the state for the income year, expressed as a percentage of such sales or charges whether within or without the state.

In special cases where, in the judgment of the state tax assessor, such application of the above factors does not result in fair and equitable allocation to the state, such net income shall be allocated in accordance with rules and regulations prescribed by the state tax assessor.

Sec. 351. Capital gains and losses. For the purpose of ascertaining gain or loss from the sale or other disposition of property, real, personal or mixed, acquired before January 1, 1951, the taxpayer may, if it so elects, in lieu of the adjusted basis prescribed by said code, use the fair market value of such property as of January 1, 1951, adjusted for the period subsequent to January 1, 1951. In all other respects the gain or loss on the sale or other disposition of property shall be ascertained as prescribed by said code.

Sec. 352. Consolidation. When a corporation taxable hereunder shall acquire either directly, indirectly or by merger or consolidation the major portion of the actively employed assets or the franchises of another corporation or of corporations exercising a franchise or doing any business in this state during any year, or shall merge or consolidate with another corporation, it shall file a report within 60 days and include therein a statement showing its own net income and the consolidated net income of all such corporations for the preceding calendar or fiscal year to the extent that all such income has not been used or included in measuring the franchise tax to this state.

Sec. 353. Returns. Returns shall be in such form, and shall contain such information and detail, as the state tax assessor may from time to time prescribe, and shall be filed at his main office or at any branch office which

he may establish, on or before the 15th day of the 5th month next after the close of the preceding income year. In case of sickness, absence or other disability, or whenever in his judgment good cause exists, the state tax assessor may allow further time for filing returns. Returns shall be verified by written declarations that the statements therein are made subject to the pains and penalties of perjury. The person signing such a return shall be deemed to be the person subject to the pains and penalties of perjury. The state tax assessor shall cause to be prepared blank forms for the returns and shall cause them to be distributed throughout the state and to be furnished upon application, but failure to receive or secure the form shall not relieve a taxpayer from the obligation of making the return herein required.

Sec. 354. Penalty. A corporation which fails to make any return or report required by sections 348 to 362, inclusive, may be liable to a penalty of 25% of the tax, to be added thereto and assessed and collected in the manner provided for the assessment and collection of taxes under section 349, or in a civil action for debt to be brought by the state tax assessor; and an officer of any such corporation who makes a fraudulent return or statement with intent to defeat or evade the payment of the taxes prescribed by sections 348 to 362, inclusive, shall be liable to a penalty of not more than \$1,000, to be collected in the same manner.

Sec. 355. Payment of tax. Taxes levied under the provisions of sections 348 to 362, inclusive, shall be paid to the state tax assessor at the time the return is filed under the provisions of section 353.

If the time for filing the return is extended, under the provisions of section 353, or if the tax is not paid when due, in either case, interest at the rate of 6% per year from the original due date of the return shall be added to and become part of the tax. The state tax assessor shall pay over all receipts from such tax to the treasurer of state daily.

Sec. 356. Delinquent taxes. All taxes due under the provisions of sections 348 to 362, inclusive, may be collected by an action of debt brought by the state tax assessor. In the event of failure to pay upon the final determination of tax liability by any court, the state tax assessor shall so certify to the secretary of state, who shall suspend the taxpayer's charter or revoke its license to do business in this state.

Sec. 357. Revision of tax by state tax assessor. When the state tax assessor discovers from the examination of the return or otherwise that the net income of any taxpayer, or any portion thereof, has not been correctly stated on the return, he may, at any time within 3 years after the time when

the return was due, correct the same and give notice to the taxpayer of such correction, and such taxpayer shall thereupon have an opportunity, within 30 days, to confer with the state tax assessor as to the proposed correction. The limitation of 3 years to the correction of such return shall not apply to the correction of fraudulent returns. After the expiration of 30 days from such notification, the state tax assessor shall assess the taxpayer for such additional tax as he finds due on the basis of such corrected return and shall give notice to the taxpayer so assessed, of the amount of the tax and interest and penalties, if any, and the amount thereof shall be due and payable within 10 days from the date of such notice. The provisions of section 359 with respect to appeal shall apply to a tax so assessed. No additional tax amounting to less than \$10 shall be assessed.

Sec. 358. Revision of tax at request of taxpayer. A taxpayer may apply to the state tax assessor for revision of the tax assessed against him at any time within 2 years from the time of filing of the return. The state tax assessor shall grant a hearing thereon and if, upon such hearing, he shall determine that the tax is excessive or incorrect, he shall resettle the same according to the law and the facts and adjust the computation of the tax accordingly. The state tax assessor shall notify the taxpayer of his determination and the state shall refund to the taxpayer the amount, if any, paid in excess of the tax found by him to be due. When the taxpayer has failed, without good cause, to file a return within the time prescribed by law, or has filed a fraudulent return or, having previously filed an incorrect return, has failed, after notice, to file a proper return, the state tax assessor shall add to the tax 25% of the amount for which the taxpayer is found to be properly assessed.

Sec. 359. Appeal. The determination of the state tax assessor upon any application made by a taxpayer for revision of any tax assessed under the provisions of sections 348 to 362, inclusive, may be appealed from to the superior court in and for Kennebec county, on petition filed by the taxpayer against the state tax assessor. The petition shall be filed within 90 days after receipt by the taxpayer or his agent of written notice by the state tax assessor of his determination given as provided in section 357. Thereupon, appropriate proceedings shall be had and the relief, if any, to which the taxpayer may be found entitled may be granted and any taxes, interest or penalties paid, found by the court to be illegally assessed, shall be ordered refunded to the taxpayer with costs, and judgment entered accordingly.

Sec. 360. Exemptions. The following corporations shall not be deemed to be mercantile, manufacturing or business corporations within the mean-

ing of sections 348 to 362, inclusive, and shall be exempt from the taxes imposed:

- I. Insurance, surety and guaranty companies, mutual or otherwise;
- II. Life, fire and marine insurance corporations, and mutual life, fire and marine insurance companies;
- III. Cemetery corporations and associations, labor, agricultural or horticultural organizations, fraternal beneficiary societies, no part of the net earnings of which inures to any member or stockholder;
- IV. Sanitary corporations, corporations organized for religious, charitable, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual member; business organizations, chambers of commerce or boards of trade not organized for profit, no part of the net earnings of which inures to the benefit of any private stockholder or individual member; clubs organized and operated exclusively for pleasure and recreation and other non-profitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual member;
- V. Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare;
- VI. Farmers' or other mutual hail, cyclone, fire or life insurance companies, mutual water companies, mutual or cooperative electric or telephone companies, or similar organizations of a purely local character, the income of which companies consists solely of assessments, dues and fees collected from the members for the sole purpose of meeting the expenses of the company;
- VII. Farmers', fruit-growers' or like associations organized and operated on a cooperative basis
  - A. for the purpose of processing, preparing for market, handling or marketing the farm products of members of other producers, and turning back to them the proceeds of sales, less the necessary marketing, handling or processing expenses, on the basis of either the quantity or the value of the products furnished by them, or
  - B. for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses.

Sec. 361. Rules and regulations. The state tax assessor shall be

charged with the duty of administering and enforcing all the provisions of sections 348 to 362, inclusive, and is authorized and empowered to adopt, prescribe and from time to time alter and amend and to enforce reasonable rules, orders and regulations for the purpose of carrying out the provisions thereof; and may require by order or subpoena, the production of any books, papers, accounts or other information necessary to the carrying out of the provisions thereof. All reports and returns shall be upon standard forms adopted by the state tax assessor with no more detailed information relating to the taxpayer's business than is necessary to enable the state tax assessor to administer fully the provisions of sections 348 to 362, inclusive.

**Sec. 362. Validating provisions.** Nothing in sections 348 to 362, inclusive, shall be construed to repeal any of the provisions of chapter 14 of the revised statutes, as amended.'

**Sec. 2. Effective date.** The tax imposed by sections 348 to 362, inclusive, shall be measured by income reported for each income year beginning on or after January 1, 1951.

**Sec. 3. R. S., c. 14, §110, amended.** The 1st sentence of section 110 of chapter 14 of the revised statutes, as amended by section 6 of chapter 42 of the public laws of 1945 is hereby further amended to read as follows:

'Every corporation, person or association operating any railroad in the state under lease or otherwise shall pay to the state tax assessor, for the use of the state, an annual excise tax for the privilege of exercising its franchises and the franchises of its leased roads in the state, which, with the tax provided for in section 4 of chapter 81, **and in sections 348 to 362, inclusive,** is in place of all taxes upon such railroad, its property and stock.'

**Sec. 4. R. S., c. 14, § 121, amended.** The 1st paragraph of section 121 of chapter 14 of the revised statutes, as amended by section 14 of chapter 42 of the public laws of 1945, is hereby further amended to read as follows:

'Every corporation, association or person operating in whole or in part a telephone or telegraph line within the state for tolls or other compensation shall pay to the state tax assessor, for the use of the state, an annual excise tax for the privilege of conducting such business within the state, which tax, with the tax provided for in section 126, **and in sections 348 to 362, inclusive,** is in place of all taxes upon the property of such corporation, association or person employed in such business, and of all taxes upon the shares of the capital stock of any such corporation.'



**Sec. 5. R. S., c. 14, § 126, amended.** Section 126 of chapter 14 of the revised statutes, as amended, is hereby further amended to read as follows:

**'Sec. 126. Tax to be in lieu of all taxes.** The excise tax collected under the provisions of the 7 preceding sections **together with the tax imposed under the provisions of sections 348 to 362, inclusive,** shall be in lieu of all taxes upon any corporation therein designated, upon its shares of capital stock, and its property; provided, however, that the land and buildings thereon owned by such corporation, association or person shall be taxed in the municipality in which the same are situated. The assessment of taxes on such land and buildings shall be legal, whether assessed as resident or non-resident property.'