

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE

ONE HUNDRED AND NINTH LEGISLATURE

FIRST REGULAR SESSION

January 3, 1979 to June 15, 1979

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24 MRSA § 2301, sub-§ 7 as last repealed and replaced by PL 1977, c. 141, is amended to read:

7. **Administrative services.** With the prior approval of the superintendent, such corporation shall have the right to utilize its organization and facilities, **either directly or through another legal entity owned by it and similar corporations located in other states**, to perform services for the United States or the State of Maine Government or the units or agencies of either; or any charitable or nonprofit organization involved in health care.

Effective September 14, 1979

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## CHAPTER 378

H. P. 1067 — L. D. 1348

**AN ACT to Establish Standard Assessment Procedures for the Tax Laws.**

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

Sec. 1. 36 MRSA c. 5, as amended by PL 1975, c. 771, § 398, is repealed.

Sec. 2. 36 MRSA c. 7, § 111 is enacted to read:

### § 111. Definitions

As used in this title, unless the context otherwise indicates, the following terms shall have the following meanings.

1. **Assessor.** "Assessor" means the State Tax Assessor, except that, in Part 2, Property Taxes, it means the State Tax Assessor with respect to the unorganized territory and the respective municipal assessors or chief assessors of primary assessing areas with respect to the organized areas.

2. **Notice.** "Notice" means notification served personally or mailed by certified or registered mail to the last known address of the person for whom the notification is intended.

If the State Tax Assessor attempts to give notice by certified or registered mail and the mailing is returned by the United States Postal Service with the notation "unclaimed" or "refused", he may then give notice, for purposes of this Title, by sending the notification by first-class mail to the person for whom the notification is intended at the address used on the returned certified or registered mail. Notice given in this manner shall be deemed to be received 3 days after the first-class mailing.

In the case of a joint income tax return, notice may be a single joint notice except that, if the State Tax Assessor is notified by either spouse that separate residences have been established, he shall mail a joint notice to each spouse.

If the person for whom notification is intended is deceased or under a legal disability, notice may be mailed to that person's last known address, unless the State Tax Assessor has received notice of the existence of a fiduciary relationship with respect to that person, in which case notice shall be mailed to the last known address of the fiduciary.

3. **Person.** "Person" means an individual, firm, partnership, association, society, club, corporation, estate, trust, business trust, receiver, assignee or any other group or combination acting as a unit, the State or Federal Government or any political subdivision or agency of either government.

4. **Return.** "Return" means any document containing information required by this Title to be reported to the State Tax Assessor.

5. **Tax.** "Tax" means the total amount of each tax required to be paid, withheld and paid over, or collected and paid over under this Title and includes the amount of any interest, addition to tax or civil penalty relating thereto.

6. **Tax Assessor.** "Tax Assessor" means the State Tax Assessor.

Sec. 3. 36 MRSA c. 7, § 135 is enacted to read:

#### § 135. Record-keeping requirements

1. **Taxpayers.** The State Tax Assessor shall by rule or regulation require persons subject to tax under this Title to keep such records as he deems necessary for the reasonable administration of this Title and he shall determine the period for which all such records shall be preserved. They shall be kept in such manner as to ensure their security and accessibility for inspection by the State Tax Assessor or any of his employees engaged in the administration of this Title. The period of preservation shall not exceed 7 years.

2. **Bureau of Taxation.** Returns filed under this Title or microfilm reproductions of those returns shall be preserved for 3 years and thereafter until the State Tax Assessor orders their destruction.

Sec. 4. 36 MRSA c. 7, § 141 is enacted to read:

#### § 141. Assessment

1. **General provisions.** Unless otherwise provided, any amount of tax which a person declares on a return filed by him with the State Tax Assessor to be due to the State shall be deemed to be assessed at the time the return is filed and shall be payable on or before the date prescribed for filing the return, determined without

regard to any extension of time granted for filing the return. When a return is filed, the State Tax Assessor shall cause it to be examined and may conduct such audits or investigations as he believes necessary to determine the correct tax liability. If he determines that the amount of tax shown on the return is less than the correct amount, the State Tax Assessor shall assess the tax due the State. No such assessment shall be made after 3 years from the date the return was filed or the date the return was required to be filed, whichever is later. At any time within the appropriate assessment period prescribed by this section, the State Tax Assessor may make a supplemental assessment if he finds that any previous assessment is imperfect or incomplete in any material aspect.

2. Exceptions.

A. An assessment may be made within 6 years from the date the return was filed if the tax liability shown on the return is less than  $\frac{1}{2}$  of the tax liability determined by the State Tax Assessor and the additional liability is attributable to information which was required to be reported but was not reported in the return.

B. An assessment may be made at any time with respect to a time period for which a fraudulent return has been filed.

C. An assessment may be made at any time with respect to a time period for which a return has become due but has not been filed. If any person failing to file a return fails to produce, within a reasonable time after notice, information which the State Tax Assessor believes necessary to determine tax liability for the period involved, the State Tax Assessor may assess an estimated tax liability based upon the best information otherwise available. In any proceeding for the collection of tax for the period involved, that estimate shall constitute prima facie evidence of the tax liability.

D. If the State Tax Assessor finds that the collection of tax for any reporting period will be jeopardized by delay, he may, upon giving notice of this finding to the person liable for the tax, demand immediate payment of any tax which has been assessed and terminate the current reporting period and demand an immediate return with respect to that period. Assessments for periods as to which jeopardy has been declared are immediately payable and proceedings for collection may be commenced at once. The person liable may stay collection by petitioning, in accordance with section 151, for reconsideration of the assessment and by depositing with the State Tax Assessor, within the time period specified in section 151, a bond or other security in the amount of the assessment with respect to which the stay of collection is sought. Any finding by the State Tax Assessor of jeopardy or of tax liability as to which immediate payment is demanded under this paragraph is presumed to be correct, and the burden of showing otherwise shall be upon the taxpayer.

E. The time limitations for assessment specified in this section may be extended to any later date to which the State Tax Assessor and person liable for tax agree in writing.

**3. Abatement.** If justice requires, the State Tax Assessor may, with the approval of the Governor, abate, within 3 years from the date of assessment, all or part of any tax assessed by the State Tax Assessor.

**Sec. 5.** 36 MRSA § 151, first paragraph, 3rd sentence, as enacted by PL 1977, c. 694, § 676, is repealed as follows:

~~For purposes of income taxation, the word "assessment" in this section shall have the same meaning as the term "proposed assessment" in the income tax law~~

**Sec. 6.** 36 MRSA § 573, sub-§ 1, as enacted by PL 1971, c. 616, § 8, is repealed.

**Sec. 7.** 36 MRSA § 1102, sub-§ 1, as enacted by PL 1975, c. 726, § 2, is repealed.

**Sec. 8.** 36 MRSA § 1752, sub-§ 18 is repealed.

**Sec. 9.** 36 MRSA § 1814, sub-§ 2, as enacted by PL 1977, c. 316, § 1, is amended to read:

**2. Tax liability subject to assessment, collection and enforcement.** The tax liability specified in subsection 1 shall be subject to assessment, collection and enforcement by the State Tax Assessor in the manner provided in chapters 7 and 211 to 225.

**Sec. 10.** 36 MRSA § 1906 is repealed.

**Sec. 11.** 36 MRSA § 1921, first ¶, last sentence, as enacted by PL 1977, c. 316, § 2, is amended to read:

The liability for such taxes shall be enforceable, by assessment and collection in the manner prescribed in chapters 7 and 211 to 225, against:

**Sec. 12.** 36 MRSA § 1954, as amended by PL 1965, c. 196, § 3, is repealed.

**Sec. 13.** 36 MRSA § 1955, as repealed and replaced by PL 1975, c. 702, § 7, is repealed.

**Sec. 14.** 36 MRSA § 1955-C is enacted to read:

**§ 1955-C. Assessment for vehicles**

**Certificates forwarded to the State Tax Assessor under Title 29, section 204, shall be treated as returns filed under this Title for purposes of section 141.**

**Sec. 15.** 36 MRSA § 1956, as repealed and replaced by PL 1977, c. 316, § 3, is repealed.

**Sec. 16.** 36 MRSA § 1961, first sentence, as repealed and replaced by PL 1975, c. 765, § 21, is amended to read:

If any amount required to be paid to the State under chapters 7 and 211 to 225 is not paid when due, the State Tax Assessor may file in the office of the registry of deeds of the county where such property is located with respect to real property or fixtures and in the office in which a security or financing statement or notice with respect to personal property would be filed a notice of lien specifying the amount of tax, interest, penalty and costs due, the name and last known address of the person liable for the amount and the fact that the State Tax Assessor has complied with all the provisions of chapters 7 and 211 to 225 in the assessment of the tax.

**Sec. 17.** 36 MRSA § 2011, last ¶ is amended to read:

Any taxpayer dissatisfied with the decision of the State Tax Assessor, upon a written request for refund filed under this section, may request reconsideration and appeal therefrom to the Superior Court in the same manner and under the same conditions as in the case of assessments made under chapters 7 and 211 to 225. The decision of the State Tax Assessor upon such written request for refund shall become final as to law and fact in the same manner and under the same conditions as in the case of assessments made under chapters 7 and 211 to 225.

**Sec. 18.** 36 MRSA § 2061, as amended by PL 1965, c. 362, § 7, is repealed.

**Sec. 19.** 36 MRSA § 2518, first sentence, as repealed and replaced by PL 1973, c. 727, § 8, is amended to read:

~~If any insurance company or association refuses or neglects to make a return required by this chapter, the State Tax Assessor shall make assessment on such company or association as he deems just, and unless the same is paid fails to pay on demand a tax assessed under section 141, subsection 2, paragraph C, the State Tax Assessor shall certify that failure to the Superintendent of Insurance that payment of such tax has not been made and such who shall give notice to the company or association that it shall do no more business in the State and the Superintendent of Insurance shall give notice accordingly.~~

**Sec. 20.** 36 MRSA § 2628, 2nd sentence is repealed as follows:

~~Until such returns are so required, or, in default of such returns when required, the State Tax Assessor shall act upon the best information that he may obtain~~

**Sec. 21.** 36 MRSA § 2687-A, as amended by PL 1975, c. 723, § 59, is repealed.

**Sec. 22.** 36 MRSA § 2906, 5th sentence, as amended by PL 1977, c. 679, § 20, is repealed as follows:

~~Each certificate holder shall, within 15 days after demand made upon him by the State Tax Assessor, pay a tax of 9¢ per gallon upon each gallon of such fuel upon which the tax has not been paid, together with interest and penalties, which upon an audit the State Tax Assessor may find to have been received into the State during the preceding 2 calendar years by the certificate holder and not properly~~



~~accounted for in a report or in accordance with law, provided such demand is made within one year of the close of the period covered by such audit~~

Sec. 23. 36 MRSA § 2912, first sentence, as repealed and replaced by PL 1969, c. 590, § 69, is repealed as follows:

~~Every distributor of internal combustion fuels shall keep a record of sales of such fuels as are sold to be used for aeronautical purposes and shall render a report thereof as provided in section 2906~~

Sec. 24. 36 MRSA § 2966, as amended by PL 1973, c. 7, § 5, is amended to read:

§ 2966. Collection of tax

~~If any motor carrier, subject to this chapter and not exempted under section 2965, fails to make the returns required, the State Tax Assessor shall make an assessment of the tax, interest and penalties upon such calculation of the amount of motor fuel used by such motor carrier within this State as he thinks just, with such evidence as he may obtain, and such assessment shall be final. If any motor carrier fails to pay such tax, interest and penalties on demand a tax assessed under section 141, subsection 2, paragraph C, the State Tax Assessor may forthwith commence a civil action in the name of the State for the recovery of the tax thereof. In addition to such action or without bringing such action, the State Tax Assessor and may recommend to the Public Utilities Commission that the certificate or permit of such that motor carrier be suspended or revoked.~~

Sec. 25. 36 MRSA § 3031, as amended by PL 1965, c. 513, § 78, is repealed.

Sec. 26. 36 MRSA § 3032, as amended by PL 1977, c. 696, § 283, is repealed.

Sec. 26-A. 36 MRSA § 3035, 4th ¶, as last amended by PL 1975, c. 10, is repealed as follows:

~~Each dealer shall, within 15 days after demand made on him by the State Tax Assessor, pay a tax of 9¢ per gallon upon each gallon of such fuels upon which the tax has not been paid which, upon an audit, the State Tax Assessor may find to have been received into the State during the preceding 2 years by the dealer and not properly accounted for in a dealer's report or in accordance with law~~

Sec. 27. 36 MRSA § 3583 is repealed.

Sec. 28. 36 MRSA § 4307, first sentence is amended to read:

~~Every processor or shipper shall keep as a part of his permanent records a record of all sales or purchases of blueberries and said records shall be open for inspection at all times, and every processor or shipper shall, on or before November 1st of each year, render a report to the State Tax Assessor stating the~~

quantity of blueberries purchased or sold by him during the current season, on forms to be furnished by said the State Tax Assessor.

Sec. 29. 36 MRSA § 4361, sub-§ 8 is repealed.

Sec. 30. 36 MRSA § 4375, first 2 sentences are repealed as follows:

~~Each distributor and each dealer shall keep complete and accurate records of all cigarettes manufactured, produced, purchased and sold. Such records shall be of such kind and in such form as the Tax Assessor may prescribe and shall be safely preserved for 2 years in such manner as to insure permanency and accessibility for inspection by the Tax Assessor and his authorized agents~~

Sec. 30-A. 36 MRSA § 4508 is repealed.

Sec. 30-B. 36 MRSA § 4509, first sentence is amended to read:

~~Every handler shall keep as a part of his permanent records a record of all purchases, sales and shipments of milk, which said records shall be open for inspection at all times, and every handler shall, on or before the 20th day of each month, render a report to the State Tax Assessor stating the quantity of milk received by him during the preceding calendar month and every.~~ Every handler who is a producer-dealer shall include in such his report the quantity of milk produced and sold by him other than to a handler ~~except that upon.~~ Upon application to the State Tax Assessor, handlers who sell less than 100 quarts of milk per day may be permitted by the State Tax Assessor to file reports quarterly upon the 20th day of the month following the quarter.

Sec. 31. 36 MRSA § 4527, as enacted by PL 1975, c. 444, § 6, is repealed.

Sec. 32. 36 MRSA § 4528, first sentence, as enacted by PL 1975, c. 444, § 6, is amended to read:

~~Each dealer shall keep as part of his permanent records a record of all purchases, sales and shipments of milk, which records shall be open for inspection at all times, and every dealer shall, on or before the 20th day of each month render a report to the State Tax Assessor stating the quantity of milk received by him during the preceding calendar month.~~

Sec. 33. 36 MRSA § 4569, first sentence is amended to read:

~~Every shipper shall keep as a part of his permanent records a record of all purchases, sales and shipments of potatoes, which said records shall be open for inspection at all times, and every shipper shall, on or before the 15th day of each month, render a report to the State Tax Assessor stating the quantity of potatoes received, sold or shipped by him during the preceding calendar month and any additional information which the State Tax Assessor deems pertinent, on forms to be furnished by said the State Tax Assessor and said report shall contain such~~

further information pertinent thereto as said State Tax Assessor shall prescribe.

**Sec. 34.** 36 MRSA § 4697, first 3 sentences are amended to read:

Every packer shall keep, as a part of his permanent records, a record of all sardines packed, which said records shall be open for inspection at all times, and every packer shall, on or before the 10th day of each month ~~render a~~, report to the State Tax Assessor stating the quantity of sardines packed by him during the preceding calendar month, on forms to be furnished by said the State Tax Assessor, and at the same time shall pay to the State Tax Assessor the tax of 25¢ per case on all sardines so reported as packed. If it appears to the State Tax Assessor from inspection of records or otherwise **determines** that an additional tax is due or overpayment of tax has been made ~~additional assessments or refunds shall be made by the State Tax Assessor~~ **he shall make a refund**. Such additional assessments shall be due upon certification to the taxpayer

**Sec. 35.** 36 MRSA § 5102, sub-§§ 1 and 9, as enacted by P&SL 1969, c. 154, § F, are repealed.

**Sec. 36.** 36 MRSA § 5260, as enacted by P&SL 1969, c. 154, § F, is repealed.

**Sec. 37.** 36 MRSA § 5267, as enacted by P&SL 1969, c. 154, § F, is repealed.

**Sec. 38.** 36 MRSA § 5269, as amended by PL 1977, c. 694, § 725, is repealed.

**Sec. 39.** 36 MRSA § 5270, sub-§ 1, as enacted by P&SL 1969, c. 154, § F, is repealed.

**Sec. 40.** 36 MRSA § 5270, sub-§ 2, first sentence, as enacted by P&SL 1969, c. 154, § F, is amended to read:

If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25% of the amount of gross income stated in the return, a notice of a proposed deficiency ~~an~~ assessment may be mailed to the taxpayer made within 6 years after the return was filed.

**Sec. 41.** 36 MRSA § 5270, sub-§§ 3-7, as enacted by P&SL 1969, c. 154, § F, are repealed.

**Sec. 42.** 36 MRSA § 5271, as enacted by P&SL 1969, c. 154, § F, is repealed.

**Sec. 43.** 36 MRSA § 5274-A is enacted to read:

#### § 5274-A. Penalty

Any person required to collect, truthfully account for and pay over the tax imposed by this Part, who willfully fails to collect the tax, willfully fails to truthfully account for and pay over the tax or willfully attempts in any manner to

evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, not collected or not accounted for and paid over. For purposes of this section, "person" means an individual, corporation or partnership or an officer or employee of any corporation, including a dissolved corporation, or a member or employee of any partnership who, as such officer, employee or member, was, at the time of the violation, under a duty to perform the act with respect to which the violation occurred.

Sec. 44. 36 MRSA § 5275, sub-§ 2, last ¶, as enacted by P&SL 1969, c. 154, § F, is repealed.

Sec. 45. 36 MRSA § 5302, as amended by PL 1977, c. 694, § 730, is repealed.

Sec. 46. 36 MRSA § 5303, as amended by PL 1977, c. 694, § 731, is repealed.

Sec. 47. 36 MRSA § 5311, sub-§ 2, as last amended by PL 1977, c. 165, § 6, is further amended to read:

2. **Notice and demand.** The assessor ~~State Tax Assessor~~ shall as soon as practicable give notice to each taxpayer liable for any amount of **unpaid** tax, addition to tax, ~~additional amount~~ penalty or interest, which has been assessed ~~but remains unpaid and as to which administrative and judicial review have been exhausted~~, stating the amount and demanding **payment thereof** within 10 days of the date of the notice and demand ~~payment thereof~~. Such notice ~~shall be left at the dwelling place or usual place of business of such person or shall be sent by certified or registered mail to such person's last known address and shall warn the person that if he does not make the payment as demanded, the assessor State Tax Assessor may certify the amount due for collection by warrant as provided, or may certify the amount due to the Attorney General for collection. Except where the assessor State Tax Assessor determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date, including any date fixed by extension, prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.~~

Sec. 48. 36 MRSA § 5321, as amended by PL 1977, c. 694, § 735, is repealed.

Sec. 49. 36 MRSA § 5322, sub-§ 2, as enacted by P&SL 1969, c. 154, § F, is amended to read:

2. **Adjudication of claims.** Claims for the deficiency and such additions to tax and interest may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of a protest before the ~~assessor State Tax Assessor~~ under section ~~5262~~ 151. No protest against a proposed assessment shall be filed with the ~~assessor State Tax Assessor~~ after the adjudication of bankruptcy or appointment of the receiver.

Sec. 50. 36 MRSA § 5340, sub-§ 5, as amended by PL 1971, c. 61, § 13, is repealed.

Effective September 14, 1979

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## CHAPTER 379

H. P. 1130 — L. D. 1399

### AN ACT to Amend the Split Sentencing Provisions of the Criminal Code.

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

Sec. 1. 17-A MRSA § 1203, sub-§ 1, first sentence, as last repealed and replaced by PL 1977, c. 671, § 27, is amended to read:

~~Subject to the limitation in subsection 2, the~~ The court may sentence a person to an initial term of imprisonment in a designated institution to be followed by a suspended term of imprisonment with probation; provided that the aggregate of the initial term of imprisonment and the suspended term of imprisonment shall not exceed the maximum term authorized for the crime.

Sec. 2. 17-A MRSA § 1203, sub-§ 2, as repealed and replaced by PL 1977, c. 671, § 27, is repealed.

Effective September 14, 1979

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## CHAPTER 380

H. P. 1185 — L. D. 1458

### AN ACT to Allow Approved Conservation Plans to Satisfy the Requirements of the Water Pollution Abatement Licensing Program.

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

Sec. 1. 38 MRSA § 361-A, sub-§ 1-B is enacted to read:

1-B. Agricultural activities. "Agricultural activities" means the growing of vegetables, fruits, seeds, nursery crops, poultry, livestock, field crops, cultivated or pasture hay and farm woodlot products, including Christmas trees.

Sec. 2. 38 MRSA § 413, sub-§ 2, as amended by PL 1973, c. 788, § 208 is further