

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND ELEVENTH LEGISLATURE

SECOND SPECIAL SESSION

November 18, 1983

AND AT THE

SECOND REGULAR SESSION

January 4, 1984 to April 25, 1984

AND AT THE

THIRD SPECIAL SESSION

September 4, 1984 to September 11, 1984

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH
IN ACCORDANCE WITH MAINE REVISED STATUTES
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J.S. McCarthy Co., Inc.
Augusta, Maine
1986

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND ELEVENTH LEGISLATURE
JANUARY 4, 1984 TO APRIL 25, 1984

licensed by the Commissioner of Educational and Cultural Services. The student shall pay a registration fee of \$5.

The student permit shall expire 12 months from the date of issue.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 30, 1984.

CHAPTER 842

H.P. 1802 - L.D. 2394

AN ACT to Replace the Franchise Tax on Financial Institutions.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, in January, 1983, the United States Supreme Court, opinion in Memphis Bank and Trust Company v. Garner called in to question the validity of Maine's bank franchise law because it, like the tax considered in Garner excludes state and local obligations from its base; and

Whereas, it is necessary to replace the existing franchise tax with a tax on financial institutions based on both the income and assets of financial institutions; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 36 MRSA §5102, sub-§6, as amended by PL 1971, c. 61, §2, is further amended to read:

6. Corporation. "Corporation" means any business entity subject to income taxation as a corporation under the laws of the United States, excepting corporations subject to tax under sections 2511 to 2522 and section 5206.

Sec. 2. 36 MRSA §5206, as amended by PL 1983, c. 590, §3, is repealed and the following enacted in its place:

§5206. Franchise tax on financial institutions

A tax is imposed for each calendar year or fiscal year ending during that calendar year upon the franchise or privilege of doing business in this State of every taxable entity as defined in section 5206-B, subsection 4. The tax shall be the sum of the following:

1. Franchise tax on Maine net income. Five-tenths percent of Maine net income for those taxable entities, as defined in section 5206-B, subsection 3.

2. Franchise tax on assets. Four cents per \$1,000 of assets, as defined in section 5206-B, subsection 2.

3. Credit against tax. In each taxable year in which a financial institution sustains a book net operating loss, a credit shall be allowed against the franchise tax on assets under subsection 2. The credit shall be computed by multiplying the book net operating loss by the applicable franchise tax rate imposed by subsection 1. The total amount of any such credit allowed shall not exceed the franchise tax on assets due under subsection 2. In any tax year in which there is excess credit, the excess credit shall be carried forward for no more than the next 5 tax years and can be applied against the tax computed under subsections 1 and 2.

4. Increase in franchise tax. No increase in the franchise tax under this section shall be adopted unless a comparable percentage increase is adopted under section 5200.

Sec. 3. 36 MRSA §5206-A, as amended by PL 1983, c. 480, Pt. A, §66, is repealed and the following enacted in its place:

§5206-A. Utilization of net operating loss carry forward

Any taxable entity which has sustained a book net operating loss in a tax year ending on or after January 1, 1980, but before January 1, 1984, shall be entitled to apply the book net operating loss against Maine net income defined in section 5206, subsection 1 when computing its franchise tax under section 5206, subsection 1. The total amount of the book net operating loss which can be utilized shall not exceed net income as defined in section 5206-B, subsection 3. Any excess net operating loss shall be carried forward for no more than the next 3 tax years.

Sec. 4. 36 MRSA §5206-B is enacted to read:

§5206-B. Definitions

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

1. Affiliated group. "Affiliated group" means a group of 2 or more entities in which more than 50% of the voting stock of each member corporation is directly or indirectly owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member corporations.

2. Assets. "Assets" mean total end of year assets as reported in United States Internal Revenue Service Form 1120, Schedule L.

A. The asset base subject to the tax imposed under section 5206, subsection 2 shall be reduced by:

(1) The total assets of a taxable entity's subsidiary or subsidiaries not incorporated under the laws of the State.

3. Maine net income. "Maine net income" means for any taxable year, a taxable entity's net income or loss per books, as reported in the United States Internal Revenue Service Form 1120, Schedule M, Line 1.

A. To the extent that a taxable entity derives income from a unitary business carried on by 2 or more members of an affiliated group, Maine net income shall be determined by apportioning, in accordance with chapter 821, that part of net income of the entire group which derives from the unitary business.

4. Taxable entity. "Taxable entity" means a commercial bank, savings bank, savings institution, industrial bank, savings and loan association, loan and building association, financial institution holding company and subsidiary of any financial institution.

5. Unitary business. "Unitary business" means a business activity which is characterized by unity of ownership, functional integration, centralization of management or economies of scale.

Sec. 5. 36 MRSA §5206-C is enacted to read:

§5206-C. Refunds

A claim for a refund for any tax year prior to 1983, resulting from the deduction from federal taxable income of interest earned on obligations of the Federal Government, shall be filed on or before May 15, 1984. For tax years ending in 1983, a tax entity shall deduct interest earned on obligations of the Federal Government from federal taxable income in computing Maine net income. A tax entity shall be entitled to a refund of any estimated tax payments during the year 1983 which exceed tax liability.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved, except sections 1 to 4 of this Act shall become effective for taxable years ending during or after 1984.

Effective April 30, 1984, unless otherwise indicated.

CHAPTER 843

H.P. 1622 - L.D. 2146

AN ACT to Amend the Criminal Extradition Act.

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

Sec. 1. 15 MRSA §203, sub-§4 is enacted to read:

4. Showing of substantial prejudice. Notwithstanding any other provision of law, defects in the written demand of the executive authority of another