

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**  
**ONE HUNDRED AND TWELFTH LEGISLATURE**

**SECOND REGULAR SESSION**  
January 8, 1986 to April 16, 1986

**SECOND SPECIAL SESSION**  
May 28, 1986 to May 30, 1986

**AND AT THE**  
**THIRD SPECIAL SESSION**  
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN  
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Co., Inc.  
Augusta, Maine

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

AS PASSED AT THE  
SECOND REGULAR SESSION  
of the  
ONE HUNDRED AND TWELFTH LEGISLATURE  
1985

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2. No sales at events for children. No liquor may be sold at an auditorium at any event primarily involving primary or secondary school children.

3. Conditions on sales. No liquor may be sold or consumed in any audience seating area at an auditorium licensed under this section.

4. Sunset. This section; section 2, subsection 8, paragraph A-1; section 701-A, subsection 1, paragraph A-1; section 701-A, subsection 2, paragraph A-1; section 701-A, subsection 3, paragraph A-1; and section 701-A, subsection 4, paragraph A-1, are repealed on September 30, 1988.

Effective July 16, 1986.

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## CHAPTER 691

H.P. 1690 - L.D. 2381

### AN ACT Providing for Administrative Changes in Maine Tax Laws.

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

Sec. 1. 36 MRSA §141, sub-§3, as enacted by PL 1979, c. 378, §4, is repealed.

Sec. 2. 36 MRSA §142 is enacted to read:

#### §142. Cancellation and abatement

The State Tax Assessor may, within 3 years from the date of assessment, cancel any tax which has been levied illegally. In addition, 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 any part of any tax assessed by the State Tax Assessor.

Sec. 3. 36 MRSA §171 is enacted to read:

#### §171. Demand letter

If any tax imposed by this Title is not paid on or before its due date and no further administrative or judicial review of the assessment is available un-

der section 151, the State Tax Assessor, within 3 years after administrative and judicial review have been exhausted, may give the taxpayer notice of the amount to be paid, specifically designating tax, interest and penalty, and demand payment of that amount within 10 days of that taxpayer's receipt of notice. The notice shall include a warning that, upon failure of that taxpayer to pay as demanded, the State Tax Assessor may proceed to collect the amount due by any collection method authorized by this Title.

Sec. 4. 36 MRSa §173 is enacted to read:

§173. Collection by warrant

1. Request and issuance of warrant. If the taxpayer does not make payment as demanded pursuant to section 171, the State Tax Assessor may file in the office of the clerk of the Superior Court of any county a certificate addressed to the clerk of that court specifying the amount of tax, interest and penalty which was demanded, the name and address of the taxpayer as it appears on the records of the State Tax Assessor, the facts whereby the amount has become due, and the notice given and requesting that a warrant be issued against the taxpayer in the amount of the tax, penalty and interest set forth in the certificate and with costs. If the State Tax Assessor reasonably believes that the taxpayer may abscond within the 10-day period provided by section 171, he may, without giving notice to or making demand upon the taxpayer, request immediate issuance of a warrant. Immediately upon the filing of the certificate, the clerk of the Superior Court shall issue a warrant in favor of the State against the taxpayer in the amount of tax, interest and penalty set forth in the certificate and with costs.

2. Effect of warrant. The warrant shall have the force and effect of an execution issued upon a judgment in a civil action for taxes and may be served in the county where the taxpayer may be found by the sheriff of that county or his deputies or by any agent of the State Tax Assessor authorized under section 112, subsection 6 to collect any tax imposed by this Title. In the execution of the warrant and collection of taxes pursuant to this Title, including supplementary disclosure proceedings for that purpose under Title 14, chapter 502, an agent of the State Tax Assessor shall have the powers of a sheriff and shall be entitled to collect from the debtor the same fees and charges permitted to a sheriff. Any such fees and charges collected by that agent shall be re-

mitted promptly to the State.

Warrants shall be returnable within one year. New warrants may be issued on any such certificate within 2 years from the return day of the last preceding warrant for sums remaining unsatisfied.

Sec. 5. 36 MRSA §§175, 176 and 177 are enacted to read:

§175. Tax lien

1. Filing. If any tax imposed by this Title is not paid when due, the State Tax Assessor may file in the registry of deeds of any county or in the office in which a financing statement with respect to tangible personal property is properly filed with Title 11, section 9-401, subsection (1), paragraph (b), a notice of lien specifying the amount of the 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 this Title in the assessment of the tax. From the time of filing, the amount set forth in a certificate filed in a registry of deeds of a county constitutes a lien upon all real property in that county then owned or thereafter acquired by that person in the period before the expiration of the lien. From the time of filing, the amount set forth in a certificate filed in the office in which a financing statement with respect to personal property is properly filed constitutes a lien upon all personal property in this State then owned or thereafter acquired by that person in the period before the expiration of the lien, except that that lien upon personal property shall not extend to those types of personal property which are not subject to perfection of a security interest by means of the filing under Title 11, sections 9-104, subsection (7); 9-104, subsection (12); 9-302, subsection (3); and 9-304. The lien shall be prior to any mortgage or security interest recorded, filed or otherwise perfected after the notice, other than a purchase money security interest perfected in accordance with Title 11, section 9-301, subsection (2) and 9-312, subsection (4). In the case of any mortgage or security interest properly recorded or filed prior to the notice of lien which secures future advances by the mortgages or secured party, the lien shall be junior to all advances made within 45 days after filing of the notice of lien, or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien. Subject to the limitations in

this section, the lien provided in this section has the same force, effect and priority as a judgment lien and shall continue for 5 years from the date of recording unless sooner released or otherwise discharged. The lien may, within the 5-year period, or within 5 years from the date of the last extension of the lien in the manner provided in this subsection, be extended by filing for record in the appropriate office a copy of the notice and, from the time of filing, that lien shall be extended for 5 years unless sooner released or otherwise discharged.

2. Release. The State Tax Assessor shall issue to the taxpayer a certificate of release of the lien or release all or any portion of the property subject to any lien provided for in this Part or subordinate the lien to other liens if:

A. The State Tax Assessor finds that the liability for the amount demanded, together with costs, has been satisfied or has become unenforceable by reason of lapse of time;

B. A bond is furnished to the State Tax Assessor with surety approved by the State Tax Assessor in a sum sufficient to equal the amount demanded, together with costs, and conditioned upon payment of any judgment rendered in proceedings regularly instituted by the State Tax Assessor to enforce collection of the bond at law or of any amount agreed upon in writing by the State Tax Assessor to constitute the full amount of the liability;

C. The State Tax Assessor determines at any time that the interest of this State in the property has no value; or

D. The State Tax Assessor determines that the taxes are sufficiently secured by a lien on other property of the taxpayer or that the release or subordination of the lien will not endanger or jeopardize the collection of the taxes.

3. Enforcement. The lien provided for by subsection 1 may be enforced at any time after the tax liability with respect to which the lien arose becomes collectible under section 173, subsection 1 by a civil action brought by the Attorney General in the name of the State in the Superior Court of the county in which the property is located to subject any property, of whatever nature, in which the taxpayer has any right, title or interest, to the payment of such tax or liability. The court shall, after the parties

have been duly notified of the action, proceed to adjudicate all matters involved in the action and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the State therein is established, may decree a sale of the property by the proper officer of the court and a distribution of the proceeds of such sale according to the findings of the court. If the property is sold to satisfy a lien held by the State, the State may bid at the sale such sum, not exceeding the amount of that lien plus expenses of sale, as the State Tax Assessor directs.

§176. Levy

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

A. "Delinquent," when used to refer to taxes, means an assessed tax not paid on its due date and as to which no further administrative or judicial review is available pursuant to section 151. When used to refer to a taxpayer, the term means a taxpayer who is liable for delinquent taxes.

B. "Levy" means an administrative power to collect delinquent taxes by means of the procedure provided for in this section or the exercise of that power. The power to levy shall include the powers of distraint, seizure by any means, garnishment and sale, all in accordance with the terms of this section. The power to levy shall also include the power to release the levy where it is no longer necessary to further the process of collection of delinquent taxes. Exercise of the power of levy shall have the effect of creating a lien and shall make the State Tax Assessor a lien creditor with respect to the property, within the meaning of Title 11, section 9-301, subsection (3).

C. "Property" means the following assets of delinquent taxpayers, whether in their possession at their business premises or in the possession of 3rd parties: Cash, bank accounts, salaries and wages, accounts receivable, life insurance and endowment contracts, securities and other choses in action, and rights to receive money which are due absolutely and not subject to any contingency, subject to the jurisdiction of the State, to the extent that such assets, other than salaries



and wages, are in existence at the time of the levy to which they are subjected. The term does not include any amount payable to an individual with respect to his unemployment under unemployment compensation laws, nor any amount payable to an individual under the United States Social Security Laws, nor does the term include property or rights which, at the time of the levy, are subject to an attachment or execution under any judicial process.

D. "Salaries and wages" means gross compensation received by an employee which is subject to federal withholding under the United States Internal Revenue Code of 1954, as amended.

E. "Tax" means a sales, use or income tax imposed under this Title, together with interest and penalties.

2. Levy power. The State Tax Assessor shall have the power to levy upon the property of any delinquent taxpayer and may impose successive levies, to the extent necessary to discharge the amount of the delinquency. The levy power shall be exercised in accordance with the provisions of this chapter.

3. Levy procedure. The State Tax Assessor shall observe the following procedures in the exercise of the levy power.

A. When the State Tax Assessor determines that any taxpayer is delinquent in the payment of a tax, he may cause a demand letter to be served upon the taxpayer in the manner specified in section 111, subsection 2. The demand letter shall comply in all respects with the provisions of section 171 and shall also state that no further administrative or judicial review is available as to the delinquent amount pursuant to section 151 and, that if payment of that amount is not received within 10 days of the date of the demand, the State Tax Assessor is empowered by law to levy upon the property of the taxpayer, including his salary or wages, in accordance with this chapter.

B. If a taxpayer fails to tender payment of delinquent taxes within 10 days of his receipt of a demand letter, the State Tax Assessor may levy upon the taxpayer's property in the manner prescribed as follows.

(1) The taxpayer's property in his possession and located on his business premises may be physically seized during normal business hours, and where appropriate, sold in accordance with subsection 5. Prior to a physical seizure of property located on the taxpayer's business premises, the State Tax Assessor's agent for collection must either secure the taxpayer's written consent or obtain an ex parte court order permitting him to enter upon the premises for the purpose of levying upon the taxpayer's property and directing the sheriff for the county in which the premises are located to assist him in effecting the entry and levy. Application for such an order may be made to either the Superior Court for Kennebec County or for the county in which the premises are located and the order shall issue in every case where the court is satisfied that the State Tax Assessor has complied with this section.

(2) A levy upon the taxpayer's property in the possession of a 3rd party is accomplished by service upon such party of a notice of levy and by service upon the taxpayer of a copy of the notice, in the manner specified in section 111, subsection 2. The notice of levy shall specify the name and address of the taxpayer, the property to be levied upon, and the amount for which the property is subjected to levy, shall prohibit the 3rd party from paying over or otherwise disposing of the property to the taxpayer, except as provided in subparagraph (3), or to anyone other than the State Tax Assessor, and shall require the 3rd party to surrender and deliver up the property to the State Tax Assessor within 10 days of the date of such notice, except as provided in subparagraphs (3) and (4). The notice of levy shall further state that failure to comply with its terms will subject the 3rd party to liability to the State Tax Assessor as provided in subsection 4. Service of a notice of levy shall have the same legal effect as physical seizure, giving the State Tax Assessor constructive possession of the property as of the date of service of the notice.

(3) A levy upon salary and wages shall be made in the manner prescribed in subpara-

graph (2), except that the notice of levy shall specify the amount of percentage to be surrendered and delivered up to the State Tax Assessor by the taxpayer's employer for each pay period, consistent with the provisions of this subparagraph. Salaries and wages are exempt from levy to the extent of 75% of the taxpayer's disposable earnings for any pay period, or an amount equal to the federal minimum hourly wage multiplied by 30, multiplied by the number of weeks in the pay period, whichever is less. A levy on salaries and wages shall be continuous from the date on which the notice of levy is served until the delinquency is discharged and shall apply to all pay periods commencing after the date on which the notice of levy is served. The State Tax Assessor shall notify the taxpayer's employer immediately upon discharge of the delinquency that the levy has been discontinued.

(4) A notice of levy upon a life insurance or endowment contract may require payment to the State Tax Assessor of the full amount which the taxpayer could have had advanced to him pursuant to such contract as of the date of payment, to the extent required to discharge the delinquency. Payment shall be set for a date 90 days subsequent to the date on which the notice is served. The notice of levy in such a case shall constitute the exercise of the taxpayer's right to such an advance.

4. Duty and liability of 3rd party. Any person in possession of property of the taxpayer upon whom a notice of levy is served shall comply in a timely fashion with the terms of the levy. Upon compliance, that person shall be discharged from any obligation or liability to the delinquent taxpayer with respect to the property levied upon. Any person who fails to comply with the terms of a notice of levy shall be personally liable to the State Tax Assessor in an amount equal to the value of the property with respect to which the notice was served, but not exceeding the amount of taxes for the collection of which the levy was made. It shall be a defense to the liability imposed by this subsection that the person refusing to comply with the terms of a notice of a levy or his bailor had a valid claim against the delinquent taxpayer accruing prior to service of the notice or a valid security interest or lien upon the

property of the taxpayer perfected prior to service of the notice, but this defense shall exonerate the person refusing to comply from liability only to the extent of that claim, security interest or lien.

A person who fails to comply with the terms of a notice of levy without reasonable cause shall be liable for an additional penalty equal to 50% of the liability described in this subsection. The described liability, but not the 50% penalty, shall be credited against the tax delinquency for the collection of which the levy was made.

5. Sale of property. The State Tax Assessor shall sell property levied upon where necessary in order to enable him to apply the proceeds to the tax delinquency for the collection of which the levy was made. A sale of property levied upon under this chapter shall be conducted by the State Tax Assessor or his designee in a commercially reasonable manner no later than 60 days after the date on which physical possession of the property was obtained. The State Tax Assessor shall apply the proceeds of any sale first to payment of any valid security interest or lien upon the property perfected prior to the physical seizure or service of the notice of levy, then to the liability of the delinquent taxpayer. Any balance remaining after discharge of the delinquency shall be returned to the taxpayer, unless a court orders otherwise. The purchaser at such a sale of property levied upon shall receive good title to that property, free and clear of all encumbrances and claims, legal and equitable, not explicitly stated by the State Tax Assessor at the time of sale, notwithstanding any other provision of law.

6. Production of books. If a levy has been made or is about to be made on property, any person having custody or control of any books or records containing evidence or statements relating to the property subject to levy shall, upon demand of the State Tax Assessor, exhibit the books or records to the State Tax Assessor. If any person refuses to comply with the demand, the State Tax Assessor may apply for an ex parte order in the Superior Court for Kennebec County or for the county where the books or records are located, requiring production for inspection and copying of the books and records. The order shall issue in every case where the court is satisfied that there are reasonable grounds for the demand.

7. Actions permitted. Any person, other than the taxpayer whose delinquency occasioned the levy,

who claims that property in which he has a preexisting perfected or otherwise valid security interest on lien was wrongfully made the subject of a physical seizure or notice of levy pursuant to subsection 3, paragraph B, subparagraphs (1) and (2) may bring a civil action against the State Tax Assessor in Superior Court. Any recovery in such an action shall be limited to the value of the property levied upon and shall in no case exceed the proceeds of any sale of the property conducted in accordance with the provisions of subsection 6. Except as provided in this subsection, no suit for the purpose of restraining the collection of taxes pursuant to this section may be maintained in any court of this State by any person.

§177. Trust fund status of certain collections

1. Generally. All taxes collected by any person from purchasers pursuant to Part 3, all taxes collected by any person from purchasers under color of Part 3, which have not been properly returned and credit to the purchasers from whom they were collected, all taxes collected by any person pursuant to chapter 451 or 459, and all taxes collected by any person pursuant to chapter 827 shall constitute a special fund in trust for the State Tax Assessor. The liability for the taxes shall be enforceable by assessment and collection, in the manner prescribed in Parts 3, 5 and 8 of this Part, against the person and against any officer, director, member, agent or employee of that person who, in that capacity, is responsible for the control or management of the funds or finances of that person or is responsible for the payment of that person's taxes. The term "purchasers," as used in this subsection, includes persons who have paid rental charges for living quarters in any hotel, rooming house, tourist or trailer camp.

2. Responsible individual. Each person required to collect taxes which are designated by subsection 1 as trust funds shall inform the State Tax Assessor, at the time an audit of that person's trust fund obligation is performed by the State Tax Assessor, of the name and position of the individual who generally is responsible for the control or management of that person's funds or finances and, if different, the individual who is specifically responsible for the collection and paying over of those trust funds. Any deficiency assessments of taxes which are designated by subsection 1 as trust funds shall be made jointly in the names of the person required to collect the taxes and of the designated responsible individual.

3. Notice to segregate. Whenever the State Tax Assessor finds that the payment of the trust funds established under subsection 1 will be jeopardized by delay, neglect or misappropriation or whenever any person fails to make payment of taxes or file reports as required by Part 3, or by chapter 451, 459 or 827, the State Tax Assessor may direct that person to segregate the trust funds from and not to comingle then with any other funds or assets of that person. Within 5 days after the mailing of notice of that segregation requirement, all taxes which thereafter are collected shall be paid over an account to the State Tax Assessor until the taxes are due. The State Tax Assessor shall establish in the segregation notice the manner in which the taxes are to be paid to him. The segregation requirement shall remain in effect until a notice of cancellation is given by the State Tax Assessor.

4. Revocation for nonsegregation. Upon the expiration of the 5-day period designated in subsection 3, if any person who is a "retailer" under Part 3 or a fuel supplier, distributor or importer subject to Part 5 fails to make the required payments on account to the State Tax Assessor, the State Tax Assessor may revoke any registration certificate which has been issued on that person. The revocation shall be reviewable in accordance with section 151.

Sec. 6. 36 MRSA §184 is enacted to read:

§184. Criminal offenses

Any person who is required under this Title to collect, truthfully account for and pay over any tax imposed by this Title and who intentionally fails to collect or truthfully account for or pay over that tax at the time required by law or rule shall, in addition to any other penalties provided by law, be guilty of a Class D crime. For purposes of this section, the word "person" includes, in addition to its defined meaning in section 111, subsection 3, any officer, director, member, agent or employee of another person who, in that capacity, is responsible for the control or management of the funds and finances of that person or is responsible for either the collection or payment of that retailer's taxes.

Sec. 7. 36 MRSA §187, sub-§3, as amended by PL 1981, c. 364, §15, is repealed and the following enacted in its place:

3. Failure to pay. The following penalties shall apply.

A. Any person who fails to pay, on or before its due date, any tax due under this Title shall be liable for a penalty of \$5 or 5% of the unpaid tax, whichever is greater, for each month or fraction thereof during which the failure continues, provided that the penalty shall not exceed, in the aggregate, \$25 or 25% of the unpaid tax, whichever is greater. For purposes of this subsection, an amount assessed upon a person by the State Tax Assessor is to be considered due as of the time prescribed for filing the return on which it should have been reported.

B. Any person who fails to pay a tax assessment for which no further administrative or judicial review is available pursuant to section 151 and the Maine Administrative Procedure Act, Title 5, chapter 375, shall be liable for a penalty of \$25 or 25% of the tax due, whichever is greater, if payment of the tax due is not made within 10 days of the person's receipt of notice of demand for payment as provided by this Title. This penalty is to be explained in the notice of demand and is final when levied. Notwithstanding other provisions outside this paragraph, it is to be enforceable as though demand was made.

Sec. 8. 36 MRSA §1752, sub-§11, as amended by PL 1985, c. 276, §2, is further amended to read:

11. Retail sale or sale at retail. "Retail sale" or "sale at retail" means any sale of tangible personal property, in the ordinary course of business, for consumption or use, or for any purpose other than for resale, except resale as a casual sale, in the form of tangible personal property, any rental of living quarters in any hotel, rooming house, tourist or trailer camp, any rental of automobiles on a short-term basis, other than rental to a person engaged in the business of renting automobiles, the sale of telephone or telegraph service and the sale of extended cable television service. The term "retail sale" or "sale at retail" includes conditional sales, installment lease sales, and any other transfer of tangible personal property when the title is retained as security for the payment of the purchase price and is intended to be transferred later. The term "retail sale" or "sale at retail" also means sale of products for internal human consumption to a person for resale through coin-operated vending machines when sold to a retailer whose gross receipts

from the retail sale of tangible personal property derived through sales from vending machines are more than 50% of his gross receipts, which tax shall be paid by the retailer to the State. The term "retail sale" or "sale at retail" does not include any sale by an executor or administrator in the settlement of an estate, unless such sale is made through a retailer, or unless such sale is made in the continuation or operation of a business; nor does the term include any other isolated transaction in which any tangible personal property is sold, transferred, offered for sale or delivered by the owner of the property, such sale, transfer, offer for sale, or delivery not being made in the ordinary course of repeated and successive transactions of a like character by such owner, such transactions being elsewhere sometimes referred to as "casual sales." "Casual sales" includes transactions by a civic, religious or fraternal organization, which is not a registered retailer, at bazaars, fairs, rummage sales, picnics or similar events but not exceeding 8 days in a calendar year. The sale by a registered retailer of tangible personal property, which that retailer has used in the course of his or its business, is not a casual sale and is a retail sale subject to taxation under this Part, if that property is of a like character to that sold in the ordinary course of repeated and successive transactions. "Casual sale" shall not include any transaction in which tangible personal property is sold, transferred or offered for sale by a representative for the owner's account when such representative is a registered retailer, in which event such registered retailer shall have the same duties respecting such sale as if he had sold on his own account. "Retail sale" and "sale at retail" do not include the sale of tangible personal property which becomes an ingredient or component part of, or which is consumed or destroyed or loses its identity directly and primarily in the production of, tangible personal property for later sale or lease, other than lease for use in this State, but shall include fuel and electricity but shall not include electricity separately metered and consumed in any electrolytic process for the manufacture of tangible personal property for later sale, nor any fuel oil or coal, the by-products from the burning of which become an ingredient or component part of tangible personal property for later sale. "Retail sale" and "sale at retail" do not include the sale to a person engaged in the business of renting automobiles, of automobiles, or integral parts of automobiles or accessories to automobiles, for rental or for use in an automobile rented, on a short-term basis. It shall be considered that tangible personal



property is "consumed or destroyed" or "loses its identity" in such manufacture, if it has a normal physical life expectancy of less than one year as a usable item in the use to which it is applied. Tangible personal property is "consumed or destroyed" or "loses its identity" in that production, if it has a normal physical life expectancy of less than one year as a usable item in the use to which it is applied. "Retail sale" and "sale at retail" do not include the sale, to a person engaged in the business of renting automobiles, of automobiles, or integral parts of automobiles or accessories to automobiles, for rental or for use in an automobile rented, on a short-term basis. "Retail sale" or "sale at retail" do not include the sale of containers, boxes, crates, bags, cores, twines, tapes, bindings, wrappings, labels and other packing, packaging and shipping materials when sold to persons for use in packing, packaging or shipping tangible personal property sold by them or upon which they have performed the service of cleaning, pressing, dyeing, washing, repairing or reconditioning in their regular course of business and which are transferred to the possession of the purchaser of such tangible personal property.

Sec. 9. 36 MRSA §1757, as amended by PL 1979, c. 520, §3, is further amended to read:

§1757. Revocation of registration

The State Tax Assessor may revoke the registration certificate of a registrant who fails to file, within 15 days after receipt of notice, a bond or deposit required under section 1759 and may revoke for cause a registration certificate issued under chapters 211 to 225. The State Tax Assessor may revoke the registration certificate of a registrant who fails to file with the State Tax Assessor within 15 days after the due date a return as required under chapters 211 to 225. A revocation shall be reviewable in accordance with section 151. In any case where a registrant has failed to pay any tax required of him by this Part when the tax is shown to be due on a report filed by the registrant, or admitted to be due by the registrant, or has been determined to be due and that determination has become final, notification of the registrant by the State Tax Assessor as provided in this section shall operate to suspend the registration certificate from the date of the notice of suspension until such time as the delinquent tax is paid or a bond or deposit required under section 1759 is filed with the State Tax Assessor or it

is determined by an appropriate court that revocation is not warranted.

Sec. 10. 36 MRSA §1760, sub-§3, as amended by PL 1981, c. 163, §3, is further amended to read:

3. Food products for human consumption. Sales of food products. The term "food products" shall, except as otherwise provided, include cereals and cereal products; milk and milk products, other than candy and confectionery, but including ice cream; oleomargarine; meat and meat products; fish and fish products; eggs and egg products; vegetable and vegetable products; fruit and fruit products, including pure fruit juices; spices, condiments and salt; sugar and sugar products other than candy and confectionery; coffee and coffee substitutes; tea, cocoa and cocoa products, other than candy and confectionery.

"Food products" shall not include spirituous, malt or vinous liquors; soft drinks, sodas or beverages such as are ordinarily dispensed at bars or soda fountains or in connection therewith; medicines, tonics, vitamins and preparations in liquid, powdered, granular, tablet, capsule, lozenge or pill form, sold as dietary supplements or adjuncts, except when sold on the prescription of a physician; water, including mineral bottled and carbonated waters and ice.

"Food products" shall not include meals served on or off the premises of the retailer; or drinks or food furnished, prepared or served for consumption at tables, chairs or counters, or from trays, glasses, dishes or other tableware provided by the retailer.

This exemption does not apply to products sold to a person for resale through coin-operated vending machines when sold to a person whose gross receipts from the retail sale of tangible personal property derived through sales from vending machines are more than 50% of his gross receipts.

The sale of food products ordinarily sold for immediate consumption on or near the location of the retailer is a taxable sale even though such products are sold on a "take out" or "to go" order and are actually packaged or wrapped and taken from the premises.

The sale of items that are not food products as defined in this Part are exempt from sales or use tax if those items are purchased with federal food stamps distributed by the Department of Human Services.

Sec. 11. 36 MRSA §1760, sub-§23, as amended by PL 1975, c. 527, is further amended to read:

23. Motor vehicles. Motor vehicles purchased by a nonresident and intended to be driven or transported outside the State immediately upon delivery by the seller. If such motor vehicle is registered for use in Maine within 6 12 months of the date of purchase, the person seeking registration shall be liable for use tax on the basis of the original purchase price;

Sec. 12. 36 MRSA §1760, sub-§23-A as enacted by PL 1979, c. 528 is amended to read:

23-A. Truck bodies and trailers. Truck bodies, semi-trailers, and trailers, manufactured in Maine, except camper bodies and trailers, purchased by a nonresident who intends to remove them immediately from the State upon delivery by the seller. If the truck body, semi-trailer or trailer is returned to Maine for an otherwise taxable use in Maine within 6 12 months of the date of purchase, the purchaser shall be liable for use tax, based on the original purchase price.

Sec. 13. 36 MRSA §1760, sub-§25 as amended by PL 1979, c. 687, §6, is further amended to read:

25. Boats sold to nonresidents. Sales in this State to nonresidents of yachts and other pleasure boats and commercial vessels and boats actually registered for numbering, enrolled or documented under federal or foreign law in the appropriate customhouses or registry offices for location thereof or home ports therefor outside the State, when such craft are either delivered outside the State or delivered in the State to be sailed or transported outside the State immediately upon delivery by the seller; and any sales to nonresidents, under contracts for the construction of any such craft to be so delivered, of materials to be incorporated therein; and any sales to nonresidents for the repair, alteration, refitting, reconstruction, overhaul or restoration of any such craft to be so delivered, of materials to be incorporated therein. If a craft so registered is registered for a location or home port in the State, within 6 12 months of the date of purchase, the person seeking registration shall be liable for the use tax on the basis of the original purchase price.

Sec. 14. 36 MRSA §1760, sub-§27, as amended by PL 1979, c. 687, §7, is further amended to read:

27. Aircraft purchased by a nonresident. Aircraft purchased by a nonresident and intended to be driven or transported outside the State immediately upon delivery by the seller. If any such craft are registered for use in Maine within 6 12 months of the date of purchase, the person seeking registration shall be liable for use tax on the basis of the original purchase price.

Sec. 15. 36 MRSA §1760, sub-§28, ¶B, as amended by PL 1983, c. 828, §5, is further amended to read:

B. Receiving support from the Department of Mental Health and Mental Retardation pursuant to Title 34-B, section ~~1206~~, 3604 ~~or~~, 5433 or 6204.

Sec. 16. 36 MRSA §1760-A, as repealed and replaced by PL 1979, c. 687, §8, is repealed.

Sec. 17. 36 MRSA §1760-B is enacted to read:

§1760-B. Consistency

If subsections of section 1760 are enacted with identical subsection numbers, the agency with the responsibility for preparing the report required by Title 3, section 163-A, subsection 6, may, after consultation with the Bureau of Taxation, renumber the subsections sequentially.

Sec. 18. 36 MRSA c. 218, as amended, is repealed.

Sec. 19. 36 MRSA §1959, as amended by PL 1981, c. 470, Pt. A, §157, is repealed.

Sec. 20. 36 MRSA §1960 is repealed.

Sec. 21. 36 MRSA §1961, as amended by PL 1979, c. 378, §16, is repealed.

Sec. 22. 36 MRSA §1962, as amended by PL 1983, c. 480, Pt. A, §41, is repealed.

Sec. 23. 36 MRSA §1965, as enacted by PL 1975, c. 765, §24, is repealed.

Sec. 24. 36 MRSA §2011, first ¶, as amended by PL 1981, c. 180, §§2 and 3, is further amended to read:

If the State Tax Assessor determines, upon written application by a taxpayer or during the course of

an audit, that any tax has been paid more than once or has been erroneously or illegally collected or computed, he shall certify to the State Controller the amount collected in excess of that legally due, from whom it was collected or by whom paid, and that amount shall be credited by the State Tax Assessor on any taxes then due from the taxpayer and the balance refunded to the taxpayer or his successor, administrators, executors or assigns, but no such credit or refund may be allowed unless a written petition therefor, stating the grounds upon which refund is claimed, is filed with the State Tax Assessor or the overpayment is discovered on audit within 3 years of the date of overpayment. Interest, at the rate determined pursuant to section 186, shall be paid from the date of overpayment on any balance refunded pursuant to this chapter, except that no interest may be paid with respect to the refunds provided by section 2013. At the election of the State Tax Assessor, unless the taxpayer specifically requests a cash refund, the refund may be credited to the taxpayer's sales and use tax account, but, in the case of a credit, no further interest may accrue from the date of that election. ~~The Tax Assessor shall have the right to cancel or abate any tax which has been illegally levied.~~ Nothing shall authorize the taxpayer, or anyone acting in his behalf, to apply for a refund of any amount assessed when administrative and judicial review under section 151 has been completed.

Sec. 25. 36 MRSA §2013, sub-§1, ¶C, as amended by PL 1985, c. 411, §1, and c. 447, §1, are repealed and the following enacted in their place:

C. "Depreciable machinery and equipment" means that part of the following machinery and equipment for which depreciation is allowable under the United States Internal Revenue Code:

(1) New or used machinery and equipment for use directly and primarily in commercial agricultural production, including self-propelled vehicles, but excluding motor vehicles as defined in section 1752, subsection 7, attachments and equipment for the production of field and orchard crops; new or used machinery and equipment used in production of milk and in animal husbandry and production of livestock, including poultry; or

(2) New or used watercraft used directly and primarily for commercial fishing; and nets, traps, cables, tackle and related

equipment necessary to the operation of a commercial fishing venture, but excluding motor vehicles as defined in section 1752, subsection 7.

Sec. 26. 36 MRSA §2013, sub-§2, as amended by PL 1985, c. 447, §§2 and 3, is further amended to read:

2. Credit authorized. Any person, association of persons, firm or corporation who purchases or leases depreciable machinery or equipment for use in commercial agricultural production or commercial fishing shall be refunded the amount of sales tax paid by him by presenting to the State Tax Assessor evidence that the machinery or equipment complies with the definitions of subsection 1.

Evidence required by the State Tax Assessor may include a copy or copies of that portion of the purchaser's or lessee's most recent filing under the United States Internal Revenue Code which indicates that the purchaser or lessee is engaged in commercial agricultural production or commercial fishing and that the purchased machinery or equipment is depreciable for those purposes or would be depreciable for those purposes if owned by the lessee.

In the event that any piece of machinery or equipment shall be only partially depreciable under the United States Internal Revenue Code, any reimbursement of the sales tax shall be prorated accordingly.

Application for refunds shall be filed with the State Tax Assessor within 36 months of the date of purchase or execution of the lease.

Sec. 27. 36 MRSA §2859, as enacted by PL 1981, c. 711, §10, is repealed and the following enacted in its place:

§2859. Estimated tax requirements

A mining company shall make payments of estimated tax pursuant to section 5228, except that the estimated tax liability is to be based on liability for the mining excise tax rather than the income tax.

Sec. 28. 36 MRSA §§3231 to 3233, as amended by PL 1985, c. 127, §1, are repealed.

Sec. 29. 36 MRSA §3234, sub-§1, ¶B, as enacted by PL 1983, c. 94, Pt. D, §7, is amended to read:

B. The amount of tax required to be collected or paid is not paid on the due date prescribed in chapters 451 and 459.

Sec. 30. 36 MRSA §§3236 to 3239, as amended by PL 1985, c. 127, §1, are repealed.

Sec. 31. 36 MRSA §3241, as amended by PL 1985, c. 127, §1, is repealed.

Sec. 32. 36 MRSA §4641-C, sub-§1, as repealed and replaced by PL 1977, c. 318, §1, is amended to read:

1. Deeds to government property. Deeds to property acquired transferred to or by the United States of America, the State of Maine or any of their instrumentalities, agencies or subdivisions;

Sec. 33. 36 MRSA §5130, as enacted by PL 1977, c. 686, §11, is amended to read:

§5130. Retirement credit

For any taxable year beginning on and after January 1, 1978, a resident may receive a credit against state taxes due equal to 20% of any credit he received for that year under the United States Internal Revenue Code of 1954, ~~section 37~~ Section 22, credit for the elderly exclusive of any credit entitlement of a qualified individual who has not attained the age of 65 before the close of the taxable year. In no case shall this credit reduce the Maine income tax to less than zero.

Sec. 34. 36 MRSA §5203, as amended by PL 1979, c. 615, §5, is repealed and the following enacted in its place:

§5203. Minimum tax for tax preferences

1. Noncorporate. A tax is imposed, for each taxable year, upon every noncorporate taxpayer required to file a return under this Part, equal to the amount by which 3% of the excess of that taxpayer's alternative minimum taxable income, as defined in the United States Internal Revenue Code of 1954, Section 55(b), as amended, over that taxpayer's exemption amount, as defined in the United States Internal Revenue Code of 1954, Section 55(f), as amended, exceeds that taxpayer's liability for all other taxes, except withholding taxes, under this Part.

2. Corporate. A tax is imposed, for each taxable year, upon every corporate taxpayer required to file a return under this Part, equal to the amount by which 2.25% of the sum of that taxpayer's items of tax preference, as defined in the United States Internal Revenue Code of 1954, Section 57, as amended, but excluding the capital gain tax preference item in the United States Internal Revenue Code of 1954, Section 57, Subsection (a) (9) (B), exceeds the greater of \$1,500 or that taxpayer's liability for all other taxes, except withholding taxes, under this Part.

3. Adjustment of tax. The tax imposed by this section shall be adjusted proportionately, in accordance with a rule promulgated by the State Tax Assessor, if only a portion of the taxpayer's income is taxable by the State.

Sec. 35. 36 MRSA §5228, as amended by PL 1979, c. 615, §6, is repealed and the following enacted in its place:

§5228. Estimated tax

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

A. "Allowable credits" means the total amount of any payments with regard to a taxpayer which have been or will be paid to the Bureau of Taxation prior to the date the payment against which they are to be used as a credit is due and which are available to offset any estimated tax liability.

B. "Estimated tax" means the amount which a person estimates as the total amount of income tax which will be due under this Part exclusive of a withholder's liability for taxes withheld for a taxable year less any allowable credits for that taxable year.

C. "Period of underpayment" is the period of time from the date the installment is due until the underpayment is satisfied or until the tax return to which the estimate installment applies is due, whichever is less.

2. Requirement to pay estimated tax. Every person subject to taxation under this Part shall make payment of estimated tax as required by this Part in such form as the State Tax Assessor may require. If the person's income tax liability pursuant to this



Part exclusive of a withholder's liability for taxes withheld reduced by allowable credits for the taxable year is less than \$500 for the taxable year or, if the person had less than \$500 tax liability for the prior tax year, the requirement to make the payments is waived.

3. Amount of estimated tax to be paid. Every person required to make payment of estimated tax is liable for an estimated tax which is no less than the smaller of the following:

A. An amount equal to the preceding year's state income tax liability, if that preceding year was a taxable year of 12 months; or

B. An amount equal to 80% of the income tax liability for the current year, for individuals or an amount equal to 90% of the income tax liability for the current year for corporations, except that for farmers and fishermen this amount shall be 66 2/3% of the tax liability for the current year.

4. Due dates for estimated tax installments. For individuals, an installment payment is due the 15th day of the 4th, 6th, 9th and 13th month following the beginning of their fiscal year, except that farmers and fishermen have a single installment payment due date of January 15th of the following taxable year. For corporations, an installment payment is due the 15th day of the 4th, 6th, 9th and 12th month following the beginning of their fiscal year.

5. Amount of installment. The amount of estimated tax to be paid in a taxable year by a taxpayer is to be paid in installments by the dates established in this Part. The amount of the estimated tax is to be paid in 4 equal installments unless:

A. The taxpayer establishes by adequate record the actual distribution of tax liability and allowable credits, or both. In this case, the amount of the installment payments should be adjusted accordingly and be determined in accordance with the portion of the taxpayer's estimated tax liability applicable to that portion of his taxable year completed by the close of the month preceding the installment's due date less estimated tax payments already made for the taxable year; or

B. The taxpayer is a farmer or fisherman in which case a single installment is required.

A penalty shall accrue automatically on underpayments of the required installment amount for the period of underpayment at the rate provided pursuant to section 186. For cause, the State Tax Assessor may waive or abate all or any part of the penalty.

6. Joint estimated tax payment. If they are eligible to do so for federal tax purposes, a husband and wife may jointly estimate tax as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. If joint estimate payment is made, but husband and wife elect to determine their taxes under this chapter separately, the estimated tax for the year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

7. Short taxable year. Payment of taxes for a short taxable year shall be as provided in this subsection.

A. For an individual having a taxable year of less than 12 months, the estimated tax is to be paid in full by the 15th day of the month following the end of the taxable year.

B. For a corporation having a taxable year of less than 12 months the estimated tax is to be paid in full by the 15th day of the last month of the taxable year.

8. Installments paid in advance. At the taxpayer's election, any installment of estimated tax may be paid prior to the date prescribed for its payment.

9. Individual underpayment of 4th installment. If, on or before January 31st of the following taxable year, an individual, not including a corporation, files a return for the taxable year of the return, then no penalty may be imposed with respect to any underpayment of the 4th required installment for the year.

10. Farmer or fisherman; underpayment. If an individual is a farmer or fisherman for any taxable year, then no penalty may be imposed with respect to any underpayment of the required installment of estimated tax, if on or before March 1st of the following

taxable year, that individual files a return for the taxable year and pays in full his tax liability for the taxable year of the return.

Sec. 36. 36 MRSA §5229, as amended by PL 1979, c. 615, §7, is repealed.

Sec. 37. 36 MRSA §5230, as amended by PL 1979, c. 541, Pt. A, §240, is repealed.

Sec. 38. 36 MRSA §5253, sub-§2, as amended by P&SL 1969, c. 154, §F, is repealed.

Sec. 39. 36 MRSA §5254, as amended by PL 1981, c. 371, §4, is further amended to read:

§5254. Employer's liability for withheld taxes

Every employer required to deduct and withhold tax under this Part is hereby made liable for such tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the assessor, and any additions to tax, penalties and interest with respect thereto, shall be considered the tax of the employer. ~~Any amount of tax actually deducted and withheld under this Part shall be held to be a special fund in trust for the assessor.~~ No person ~~shall~~ may have any right of action against an employer in respect to any money deducted and withheld and paid over to the assessor in compliance or in intended compliance with this Part.

Sec. 40. 36 MRSA §5274-A, as enacted by PL 1979, c. 378, §43, is amended 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~~ , willfully fails to 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. 41. 36 MRSA §5311, sub-§2, as amended by PL 1979, c. 378, §47, is repealed.

Sec. 42. 36 MRSA §5312, as amended by PL 1977, c. 694, §733, is repealed.

Sec. 43. 36 MRSA §5312-A, as amended by PL 1977, c. 694, §734, is repealed.

Sec. 44. 36 MRSA §5313, as amended by PL 1979, c. 541, Pt. B, §51, is repealed.

Sec. 45. 36 MRSA §§5314 and 5315, as enacted by P&SL 1969, c. 154, §F, are repealed.

Sec. 46. 36 MRSA §5331, as amended by PL 1983, c. 480, Pt. A, §68, is repealed.

Sec. 47. 39 MRSA §57-C, sub-§2, as enacted by PL 1985, c. 372, Pt. A, §23, is amended to read:

2. Due date. The assessment imposed by this section is due on or before the ~~60th~~ last day of the 2nd month after the close of the calendar quarter.

Sec. 48. Effective dates. Sections 25 and 26 of this Act shall become effective for leases entered into on or after July 1, 1986. Section 34 of this Act shall become effective for tax years beginning on or after January 1, 1986. Sections 27 and 35 of this Act shall become effective for tax years beginning on or after January 1, 1987.

Effective July 16, 1986, unless otherwise indicated.

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## CHAPTER 692

S.P. 926 - L.D. 2313

### AN ACT to Clarify the Authority of Harbor Masters.

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

Whereas, it is desirable that coastal municipalities regulate activity in their harbors and provide