

# 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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## CHAPTER 783

H.P. 1641 - L.D. 2315

AN ACT to Implement the Visiting Committee's  
Report and to Provide the Necessary Funds  
for the University of Maine and the  
Proper Operation of Government.

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

Sec. 1. 36 MRSA §1752, sub-§2-C is enacted to read:

2-C. Fabrication services. "Fabrication services" means the production, fabrication or processing of tangible personal property, for a consideration for persons who furnish, either directly or indirectly, the materials used in the production, fabrication or processing. It includes the production of custom computer programming or the modification of computer programs. "Fabrication services" does not include the production, fabrication or processing of tangible personal property if a sale to the consumer of the tangible personal property so produced, fabricated or processed would be exempt or otherwise not subject to tax under chapters 211 to 225, or if the services are purchased by an exempt entity.

Sec. 2. 36 MRSA §1752, sub-§3-A is enacted to read:

3-A. Food products. "Food products" except as otherwise provided, includes 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; vegetables 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; and tea, cocoa and cocoa products, other than candy and confectionery.

"Food products" does 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; and water, including mineral bottled and carbonated waters and ice.

Sec. 3. 36 MRSA §1752, sub-§18-A, as enacted by PL 1965, c. 362, §4, is repealed and the following enacted in its place:

18-A. Telephone or telegraph service. "Telephone or telegraph service" means all telecommunications or telegraph service, including installation or use of telecommunication or telegraphic equipment, but not including telecommunications or telegraph service originating or terminating outside this State. "Telecommunications and telegraphic equipment" means any 2-way interactive communications device, system or process for transmitting or receiving electromagnetic signals and capable of exchanging audio, data base or textual information. Telecommunications service includes access services provided by a local exchange carrier to an interstate or intrastate interchange carrier. Notwithstanding subsection 11, a sale of access services shall be considered a retail sale. "Telephone or telegraph service" does not include directory advertising service.

Sec. 4. 36 MRSA §1760, sub-§3, as amended by PL 1981, c. 163, §3, is repealed and the following enacted in its place:

3. Food products. Sales of food products except:

A. Meals served on or off the premises of the retailer;

B. 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;

C. Those products which ordinarily are sold by the retailer for immediate consumption on or near the location of the retailer, even though the products are sold on a "take out" or "to go" order and are actually packaged or wrapped and taken from the premises;

D. Those made from a retail location from which food ordinarily is sold for consumption without further preparation or storage, even though the products are packaged or wrapped in bulk quantities; and

E. Sales of heated food or drinks; sandwiches; ice cream or ice milk in a cone or cup, including

sundaes, sodas, frappes and the like, ice cream or ice milk novelties and popsicles.

Sec. 5. 36 MRSA §1811, first ¶, as amended by PL 1983, c. 859, Pt. M, §§7 and 13, is further amended to read:

A tax is imposed on retail sales at the rate of 5% on the value of all tangible personal property, on telephone and telegraph service and, on extended cable television service sold at retail in this State, and on fabrication services and upon the rental charged for living quarters in hotels, rooming houses, tourist or trailer camps and the rental charged for automobiles rented on a short-term basis, other than a rental charged to a person engaged in the business of renting automobiles, and at the rate of 7% on the value of the rental charged for living quarters in hotels, rooming houses, tourist or trailer camps, and the rental charged for automobiles rented on a short-term basis, other than a rental charged to a person engaged in the business of renting automobiles measured by the sale price, except as in chapters 211 to 225 provided. Retailers shall pay such tax at the time and in the manner provided, and it shall be in addition to all other taxes.

Sec. 6. 36 MRSA §1812, as amended by PL 1969, c. 295, §3, is repealed and the following enacted in its place:

§1812. Adding tax to sale price

Every retailer shall add the sales tax imposed by chapters 211 to 225, or the average equivalent of that tax, to his sale price, except as otherwise provided, and when added the tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid and shall be recoverable at law in the same manner as the purchase price. When the sale price shall involve a fraction of a dollar, the tax shall be added to the sale price upon the following schedules:

A. If the tax rate is 5%:

<u>Amount of Sale Price</u>	<u>Amount of Tax</u>
<u>\$0.01 to \$0.10, inclusive</u>	<u>0¢</u>
<u>.11 to .20, inclusive</u>	<u>1¢</u>
<u>.21 to .40, inclusive</u>	<u>2¢</u>
<u>.41 to .60, inclusive</u>	<u>3¢</u>
<u>.61 to .80, inclusive</u>	<u>4¢</u>
<u>.81 to 1.00, inclusive</u>	<u>5¢</u>

B. If the tax rate is 7%:

<u>Amount of Sale Price</u>	<u>Amount of Tax</u>
<u>\$0.01 to \$0.07, inclusive</u>	<u>0¢</u>
<u>.08 to .21, inclusive</u>	<u>1¢</u>
<u>.22 to .35, inclusive</u>	<u>2¢</u>
<u>.36 to .49, inclusive</u>	<u>3¢</u>
<u>.50 to .64, inclusive</u>	<u>4¢</u>
<u>.65 to .78, inclusive</u>	<u>5¢</u>
<u>.79 to .92, inclusive</u>	<u>6¢</u>
<u>.93 to 1.00, inclusive</u>	<u>7¢</u>

When the sale price exceeds \$1, the tax to be added to the price shall be the scheduled amount for each whole dollar plus the scheduled amount for each fractional part of \$1.

When several purchases are made together and at the same time, the tax shall be computed on the total amount of the several items, except that purchases taxed at 5% and 7% shall be separately totaled.

Breakage under this section shall be retained by the retailer as compensation for the collection.

Sec. 7. 36 MRSA §1861, as amended by PL 1969, c. 295, §4, is repealed and the following enacted in its place:

§1861. Purchase of tangible personal property

A tax is imposed on the storage, use or other consumption in this State of purchases, which if the sale occurred or had occurred in this State will be subject to tax under section 1764 or 1811. A tax is imposed at the rate provided in section 1811 on the sale price on these purchases. Every person so storing, using or otherwise consuming is liable for the tax until he has paid the tax or has taken a receipt from his seller, as duly authorized by the State Tax Assessor, showing that the seller has collected the sales or use tax, in which case the seller shall be liable for it. Retailers registered under section 1754 or 1756 shall collect the tax and make remittance to the State Tax Assessor. The amount of the tax payable by the purchaser shall be that provided in the case of sales taxes by section 1812. When tangible personal property purchased for resale is withdrawn from inventory by the retailer for his own use, use tax liability accrues at the date of withdrawal.

Sec. 8. 36 MRSA §1862 is amended to read:

§1862. Taxes paid in other jurisdictions

The use tax provisions of chapters 211 to 225 shall not apply in respect to the use, storage or consumption in this State of ~~tangible personal property purchased~~ purchases at retail sale outside the State where the purchaser has paid a sales or use tax equal to or greater than the amount imposed by chapters 211 to 225 in another taxing jurisdiction, the proof of payment of ~~such~~ the tax to be according to rules and ~~regulations~~ made by the State Tax Assessor. If the amount of tax paid in another taxing jurisdiction is not equal to or greater than the amount of tax imposed by chapters 211 to 225, then the purchaser shall pay to the State Tax Assessor an amount sufficient to make the tax paid in the other taxing jurisdiction and in this State equal to the amount imposed by chapters 211 to 225.

Sec. 9. 36 MRSA §2511, as amended by PL 1983, c. 479, §1, is repealed.

Sec. 10. 36 MRSA §2512, as repealed and replaced by PL 1973, c. 727, §3, is amended to read:

§2512. Annual returns to Superintendent of Insurance

Every domestic life insurance company shall include in its annual return to the Superintendent of Insurance a statement of the amount of premiums and annuity considerations liable to taxation as provided in section ~~2511~~ 2513, and of the real estate held by it on the 31st day of the previous December, showing in detail the amount of all premiums including annuity considerations whether in cash or notes absolutely payable, received by ~~said~~ the company from residents of this State during the preceding calendar year and all dividends paid to policyholders in this State on account of ~~said~~ the premiums or annuity considerations as required by blanks furnished by the superintendent. The taxes provided by section ~~2511~~ 2513 shall be paid as provided in section 2521-A, and ~~said~~ this section and section 2518 shall be applicable thereto.

Sec. 11. 36 MRSA §2513, as amended by PL 1973, c. 727, §4, is further amended to read:

§2513. Tax on premiums and annuity considerations

Every insurance company or association which does business or collects premiums or assessments including annuity considerations in the State, except those mentioned in ~~sections 2511~~ and section 2517, including surety companies and companies engaged in the



business of credit insurance or title insurance, shall, for the privilege of doing business in this State, and in addition to any other taxes imposed for such privilege pay a tax upon all gross direct premiums including annuity considerations, whether in cash or otherwise, on contracts written on risks located or resident in the State for insurance of life, annuity, fire, casualty and other risks at the rate of 2% a year.

Sec. 12. 36 MRSA §2514, as amended by PL 1975, c. 641, is further amended to read:

§2514. Applicability of provisions

Sections ~~2511~~, 2512 and 2513 shall not apply to the taxation of any annuity consideration on any annuity contract issued prior to August 1, 1943. Sections ~~2511~~, 2512 and 2513 shall not apply to any premium from an insurance contract, which premium is received prior to October 1, 1969, or any consideration, regardless of when received, from any retirement annuity contracts issued by an insurance or annuity company organized and operated without profit to any private shareholder or individual exclusively for the purpose of aiding nonproprietary educational and scientific institutions pursuant to a retirement program established under section 403 (b) of the United States Internal Revenue Code. Premiums or considerations received from life insurance policies or annuity contracts issued in connection with the funding of a pension, annuity or profit-sharing plan or individual retirement account or annuity qualified or exempt under sections 401, 403, 404, 408 or 501 of the United States Internal Revenue Code as now or hereafter amended or renumbered from time to time, shall be exempt from tax.

Sec. 13. 36 MRSA §2515 is amended to read:

§2515. Amount of tax

In determining the amount of tax due under sections ~~2511~~ and section 2513, there shall be deducted by each company from the full amount of gross direct premiums, the amount of all direct return premiums thereon, and all dividends paid to policyholders on direct premiums and the tax shall be computed by said companies or their agents.

Sec. 14. 36 MRSA §2523, sub-§1, as enacted by PL 1983, c. 479, §3, is repealed and the following enacted in its place:

1. Tax on insurance companies. Every insurance company or association which does business or collects premiums or assessments for workers' compensation insurance in this State shall, for the privilege of doing business in this State and in addition to any other taxes imposed for that privilege, pay a tax of 2% upon all gross direct premiums written, whether in cash or in notes absolutely payable on contracts written on risks located or resident in the State for workers' compensation insurance, less return premiums thereon and less all dividends paid to policyholders.

The tax levied under this section is in lieu of the taxes levied under section 2513, insofar as those taxes are based on workers' compensation insurance premiums.

Sec. 15. 36 MRSA §3636, as amended by PL 1983, c. 480, Pt. A, §53, is repealed and the following enacted in its place:

§3636. Settlement required

The tax on all property and interests in property coming to beneficiaries from the estate of a person whose date of death is prior to July 1, 1986, shall be due on March 30, 1987, or the date specified in section 3681, whichever comes first. The tax due shall be payable by the personal representative or trustee in office or, if there is no personal representative or trustee, by the person having an interest in the property. The tax due in the estate shall be based on the value of the property subject to tax as of June 30, 1986, or as compromised as provided by section 3635.

Sec. 16. 36 MRSA c. 704 is enacted to read:

CHAPTER 704

TOBACCO PRODUCTS TAX

§4401. Definitions

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

1. Business. "Business" means any trade, occupation, activity or enterprise engaged in for the purpose of selling or distributing tobacco products in this State.

2. Distributor. "Distributor" means any person engaged in the business of producing or manufacturing tobacco products in this State for sale in this State, any person engaged in the business of selling tobacco products in this State who brings, or causes to be brought, into this State any tobacco products for sale to a retailer or any person engaged in the business of selling tobacco products who ships or transports tobacco products to retailers for sale in this State.

3. Manufacturer. "Manufacturer" means a person who manufactures and sells tobacco products.

4. Place of business. "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train or vending machines.

5. Retailer. "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.

6. Retail outlet. "Retail outlet" means a place of business from which tobacco products are sold to consumers. Vending machines shall be considered a retail outlet.

7. Sale. "Sale" means any transfer, exchange, barter or gift in any manner or by any means whatsoever, for a consideration. It shall include a gift for advertising by a person engaged in the business of selling tobacco products.

8. Subjobber. "Subjobber" means any person other than a manufacturer or distributor who buys from a distributor tobacco products upon which a tax imposed by this chapter has been paid and sells them to persons other than the ultimate consumers.

9. Tobacco products. "Tobacco products" means cigars; cheroots; stogies; periques' granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; finecut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but shall not include tobacco products which are subject to the tax provided by chapter 703.

10. Unclassified importer. "Unclassified importer" means any person, firm, corporation or association within this State, other than a distributor, as defined, who shall import, receive or acquire from without the State, tobacco products for use or consumption within the State.

11. Wholesale sales price. "Wholesale sales price" means the established price for which a manufacturer sells tobacco products to a distributor, exclusive of any discount or other reduction.

#### §4402. Licenses

Every person engaging in the business of selling tobacco products as a distributor shall secure a license from the tax assessor before engaging in that business. Every license application shall be made on a form prescribed by the tax assessor and shall state the name and address of the applicant, address of his principal place of business, and such other information as the tax assessor may require for the proper administration of this chapter. The application shall be accompanied by a fee of \$25, except that there shall be no fee required for distributors or unclassified importers licensed under chapter 703. A person without the State who ships or transports tobacco products to retailers in this State shall make application as a distributor and be granted by the tax assessor a license subject to all the provisions of this chapter and agree, upon applying for a license, to submit his books, accounts and records to examination by the Bureau of Taxation during reasonable business hours, and to accept service of process by mail when service is made in any proceeding involving enforcement of this chapter.

Each unclassified importer before importing, receiving or acquiring tobacco products from without the State shall secure a license from the tax assessor. There shall be no fee for that license.

Each license issued shall expire on July 31st of each year unless sooner revoked by the tax assessor. The license shall be prominently displayed on the premises covered by the license and no license may be transferred to any other person.

The tax assessor may revoke or suspend the license or licenses of any person for violation of this chapter applicable to the sale of tobacco products. No license may be revoked, canceled or suspended until after notice and hearing by the tax assessor.

§4403. Tax on tobacco products

1. Smokeless tobacco. A tax is imposed on all smokeless tobacco, including chewing tobacco and snuff, at the rate of 45% of the wholesale sales price.

2. Other tobacco. A tax is imposed on cigars, pipe tobacco and other tobacco intended for smoking at the rate of 12% of the wholesale sales price.

3. Imposition. The tax shall be imposed at the time the distributor or unclassified importer brings or causes to be brought into this State tobacco products that are for sale to consumers or to retailers or for use or at the time tobacco products are manufactured or fabricated in this State for sale in this State.

4. Exclusion. The tax imposed on tobacco products does not apply to those products exported from this State or to any tobacco products which under laws of the United States may not be subject to taxation by this State.

§4404. Returns; payment of tax and penalty

Every distributor, or unclassified importer shall on or before the last day of each month render, on forms to be furnished by the tax assessor, a report together with payment of the tax due under this chapter to the tax assessor stating the quantity and the wholesale sale price of all tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the State or shipped or transported to retailers within the State during the preceding calendar month. Every distributor or unclassified importer shall keep a complete and accurate record at his principal place of business to substantiate all receipts of tobacco products; this record shall be preserved for a period of 2 years in such manner as to insure permanency and accessibility for inspection.

Such monthly reports shall contain such further information as the tax assessor shall prescribe and shall show a credit for any tobacco products exempted as provided in section 4403. Records shall be maintained to substantiate the exemption. Tobacco products previously taxed which are returned to a manufacturer because the product has become unfit for use of consumption or unsalable may be taken as a credit on a subsequent return upon receipt of the credit notice from the original supplier.

If the monthly report required by this chapter is not filed, or payment is not rendered by the last day of the month the distributor or unclassified importer shall be liable to a penalty of \$1 a day for each day in arrears or 10% of the tax liability, whichever is the greater, together with interest at the rate of 1% per month or fraction thereof due on demand by the tax assessor, and recoverable in a civil action. The tax assessor may waive the penalty for cause.

§4405. The tax assessor may estimate liability

Whenever any distributor or unclassified importer shall neglect or refuse to make and file any report required by this chapter or shall file an incorrect or fraudulent report, the tax assessor shall from such information as he may obtain fix the amount of taxes, penalties and interest payable and forthwith proceed to collect the amount so fixed.

In any action or proceeding for collection of the tobacco products tax, any penalties and interest imposed in connection with an assessment by the tax assessor of the tax, penalty or interest due the State shall constitute prima facie evidence of the claim of the State. The burden of proof shall be upon the distributor or unclassified importer to show that the assessment was incorrect and contrary to law.

§4406. Inspection of records; civil action for tax

The tax assessor or his duly authorized agents shall have authority during reasonable business hours to examine the records, books, papers and any other records of the distributor, unclassified importer, retailer or subjobber to verify the truth and accuracy of any statement, report or return and whether the tax imposed by this chapter has been fully paid.

The tax assessor shall have the power to recommend legal proceedings by the Attorney General for the purpose of ascertaining the amount due under this chapter and enforcing the collection of tax, penalties and interest thereof.

§4407. Appeal procedure

Any person aggrieved by any action under this chapter because of license suspension or revocation or because of assessment of tax, penalty or interest may apply to the tax assessor, in writing, within 10 days after notice of action is delivered or mailed, requesting a hearing and setting forth the reason why such hearing should be granted and the manner of re-

lief sought. The tax assessor shall promptly consider such application and may grant or deny the hearing request. If the hearing is denied the applicant shall be promptly notified in writing of the reasons for the denial; if it is granted the tax assessor shall notify the applicant of the time and place fixed for such hearing. After the hearing the tax assessor may make such order as may appear just and lawful and shall furnish a copy of the order to the applicant. The tax assessor may, by notice in writing, at any time, order a hearing and require the taxpayer or any other individual whom the tax assessor believes to be in possession of information concerning the manufacture, importation or sale of tobacco products which have escaped taxation to appear before the tax assessor with any books, accounts, papers or other documents for examination relative thereto.

Any person aggrieved because of any action or decision of the tax assessor under this chapter may appeal therefrom within 20 days to the Superior Court. No less than 14 days before the review by the court the appellant shall serve upon the tax assessor or his duly authorized agent a copy of the petition stating the reason for the appeal and notifying the tax assessor when the appeal is to be heard. Pending judgment of the court the decision of the tax assessor shall remain in full force and effect.

#### §4408. Penalties; civil action for tax

Any person who shall willfully make any false or fraudulent report or return required by this chapter, or who shall make any false statement in any claim or invoices presented to the tax assessor or who shall knowingly present to the tax assessor any claim or invoice containing any false statements, or who shall with intent to defraud, evade or violate any provisions of this chapter, or any rules duly made under this chapter, or who shall engage in the State in business as a distributor, without being the holder of a valid license to engage in that business commits a civil violation for which a fine not exceeding \$2,000 may be assessed, payable to the State. Whenever any person fails to pay any tax, interest or penalty due under this chapter within 15 days of demand, the Attorney General shall enforce payment thereof in a court of appropriate jurisdiction. In any civil action, records of the quantity of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the State or shipped or transported to retailers within this State for the period covered by the tax assessor's audit

shall be prima facie evidence of such quantities sold, distributed or used during the period covered by the audit on which the tax with interest from the date when it was due, shall be computed and collected and for which amount, with costs, judgment shall be rendered.

§4409. Claims

The claims of the State for the sums due under this chapter shall be preferred and priority claims in the event of assignment, receivership or bankruptcy.

Sec. 17. 36 MRSA §5102, sub-§1-C is enacted to read:

1-C. Maine adjusted gross income. "Maine adjusted gross income" has the following meanings.

A. "Maine adjusted gross income" means, for a resident individual, the federal adjusted gross income of that individual, as modified by section 5122.

B. "Maine adjusted gross income" means, for a nonresident individual, that part of his federal adjusted gross income derived from sources within this State, as determined under section 5142.

Sec. 18. 36 MRSA §5102, sub-§6, as amended by PL 1983, c. 842, §1, 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~~ 2512 to 2522 and section 5206.

Sec. 19. 36 MRSA §5111, first ¶, as repealed and replaced by PL 1985, c. 535, §14, is amended to read:

For tax years beginning on or after January 1, 1985, a tax is imposed for each taxable year on the entire taxable income of every resident individual of this State and on the taxable income of every nonresident individual which is derived from sources within this State. The amount of the tax shall be determined in accordance with the following tables.

Sec. 20. 36 MRSA §5111, sub-§4 is enacted to read:

4. Nonresident individuals. A tax is imposed upon the Maine income of every nonresident individu-



al. The amount of the tax shall be equal to the tax computed under this section and chapter 805 as if the nonresident were a resident, less applicable tax credits other than that provided by section 5127, subsection 1, and multiplied by the ratio of his Maine adjusted gross income, as defined in section 5102, subsection 1-C, paragraph B, to his entire federal adjusted gross income, as modified by section 5122.

Sec. 21. 36 MRSA §5127, sub-§1, as repealed and replaced by PL 1983, c. 571, §22, is amended to read:

1. Income tax paid to other taxing jurisdiction. A resident individual is allowed a credit against the tax otherwise due under this Part for the amount of income tax imposed on him for the taxable year by another state of the United States, a political subdivision thereof, the District of Columbia or any political subdivision of a foreign country which is analogous to a state of the United States with respect to income derived from sources therein which is also subject to tax under this Part. The credit, for any of the specified taxing jurisdictions, shall not exceed the proportion of the tax otherwise due under this Part that the amount of the taxpayer's Maine adjusted gross income derived from sources in that taxing jurisdiction bears to his entire Maine adjusted gross income ~~as modified by this Part~~; provided that, when a credit is claimed for taxes paid to both a state and a political subdivision thereof, the total credit allowable for those taxes shall not exceed the proportion of the tax otherwise due under this Part that the amount of the taxpayer's Maine adjusted gross income derived from sources in ~~that~~ the other state bears to his entire Maine adjusted gross income ~~as modified by this Part~~.

Sec. 22. 36 MRSA §5140, as enacted by P&SL 1969, c. 154, §F, is repealed.

Sec. 23. 36 MRSA §5141, as enacted by P&SL 1969, c. 154, §F, is repealed.

Sec. 24. 36 MRSA §5143-A, as amended by PL 1983, c. 3, §4, is repealed.

Sec. 25. 36 MRSA §5144-A, as enacted by PL 1979, c. 711, Pt. H, §4, is repealed.

Sec. 26. 36 MRSA §5145, as amended by PL 1979, c. 711, Pt. H, §5, is repealed.

Sec. 27. 36 MRSA §5146, as enacted by PL 1977, c. 424, §2, is repealed.

Sec. 28. 36 MRSA §5160, as enacted by P&SL 1969, c. 154, §F, is repealed and the following enacted in its place:

§5160. Imposition of tax

The tax is imposed, at the rates provided by section 5111 for resident individuals, upon the taxable income of estates and trust. The tax shall be paid by the fiduciary.

Sec. 29. 36 MRSA §5161, as enacted by P&SL 1969, c. 154, §F, is repealed.

Sec. 30. 36 MRSA §5166, as enacted by P&SL 1969, c. 154, §F, is repealed.

Sec. 31. 36 MRSA §5177, as enacted by P&SL 1969, c. 154, §F, is repealed.

Sec. 32. 36 MRSA §5192, sub-§2, as enacted by P&SL 1969, c. 154, §F, is amended to read:

2. Itemized deductions. If a nonresident partner of any partnership elects to itemize his deductions in determining his taxable income in tax liability to this State, there shall be attributed to him his distributive share of partnership items of deduction from federal adjusted gross income which are deductible by him under section 5144.

Sec. 33. 36 MRSA §5206, sub-§§1 and 2, as repealed and replaced by PL 1983, c. 842, §2, are amended to read:

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

2. Franchise tax on Maine assets. Four Eight cents per \$1,000 of Maine assets, for those taxable entities, as defined in section 5206-B, subsection 2.

Sec. 34. 36 MRSA §5206, sub-§4, as enacted by PL 1983, c. 842, §2, is repealed.

Sec. 35. 36 MRSA §5206-B, sub-§§1 to 4, as enacted by PL 1983, c. 842, §4, are repealed and the following enacted in their place:

1. Affiliated group. "Affiliated group" means a group of 2 or more corporations or taxable entities in which more than 50% of the voting stock of each

member corporation or taxable entity is directly or indirectly owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member corporations or taxable entities.

2. Maine assets. "Maine assets" means, for any taxable year, a taxable entity's total end of year assets as required to be reported on United States Internal Revenue Service Form 1120, Schedule L, except for tangible personal property located outside 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 required to be reported on the United States Internal Revenue Service Form 1120, Schedule M, Line 1 and allocated or apportioned to this State under chapter 821.

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 any financial institution, including any federally chartered financial institution authorized to do business in this State, except a credit union, and any service corporation or subsidiary as defined in Title 9-B, section 131 and any financial institution holding company as defined in Title 9-B, section 1011, except that control as defined in section 1011, shall mean ownership of more than 50% of the voting stock owned directly or indirectly, which is organized under the laws of this State or authorized to do business in this State, which at any time during the taxable year realized Maine net income or had Maine assets.

Sec. 36. 36 MRSA §5214-A is enacted to read:

§5214-A. Credit to beneficiary for accumulation distribution

1. General. A beneficiary of a trust whose adjusted gross income includes all or part of an accumulation distribution by such trust, as defined in the United States Internal Revenue Code, Section 665, or its equivalent, shall be allowed a credit against the tax otherwise due under this Part for all or a proportionate part of any tax paid by the trust under

this Part for any preceding taxable year which would not have been payable if the trust had in fact made distribution to its beneficiaries at the times and in the amounts specified in the United States Internal Revenue Code, Section 666, or its equivalent.

2. Limitation on credit. The credit under this section shall not reduce the tax otherwise due from the beneficiary under this Part to an amount less than would have been due if the accumulation distribution or his part of the accumulation distribution were excluded from his adjusted gross income.

Sec. 37. 36 MRSA §5220, first ¶, as enacted by P&SL 1969, c. 154, §7, is amended to read:

An income tax return with respect to the tax imposed by this Part shall be made , on such forms as may be required by the State Tax Assessor, by the following:

Sec. 38. 36 MRSA §5220, sub-§2, as amended by PL 1979, c. 711, Pt. H, §6, is further amended to read:

2. Nonresident individuals. Every nonresident individual who has ~~taxable~~ income for the year from sources within this State: :

A. Who has adjusted gross income from sources in this State of more than \$1,000 if single and \$2,000 if married; ; or

B. Who having attained the age of 65 before the close of his taxable year has adjusted gross income from sources within this State of more than \$2,000 if single and more than \$3,000 if married and his spouse has not yet attained the age of 65 and more than \$4,000 if both have attained the age of 65 before the close of the taxable year; ;

Sec. 39. 36 MRSA §5221, sub-§1, ¶C, as enacted by P&SL 1969, c. 154, §F, is amended to read:

C. If Except as provided in subsection 2, if the federal income tax liabilities of husband and wife; other than a husband and wife described in subsection 2; are determined on a joint federal return, they shall file a joint return under this Part and their tax liabilities shall be joint and several.

Sec. 40. 36 MRSA §5221, sub-§2, as enacted by P&SL 1969, c. 154, §F, is repealed and the following enacted in its place:

2. Nonresidents. If both husband and wife are nonresidents and one has no Maine-source income, the spouse having Maine-source income shall file a separate Maine nonresident income tax return, as a single individual, in which event his tax liability shall be separate; but they may elect to determine their joint taxable income as nonresidents, in which case their liabilities shall be joint and several.

If either husband or wife is a resident and the other is a nonresident, they shall file separate Maine income tax returns as single individuals, in which event their tax liabilities shall be separate; but they may elect to determine their joint taxable income as if both were residents and, in that case, their liabilities shall be joint and several.

Sec. 41. 36 MRSA §5224-A, as enacted by PL 1979, c. 711, Pt. H, §8, is repealed and the following enacted in its place:

§5224-A. Return of part-year resident

If an individual changes his status as a resident individual or nonresident individual during his taxable year, he shall file a nonresident return pursuant to section 5220, subsection 2. His tax shall be computed, pursuant to section 5111, subsection 4, as if he were a nonresident individual, except that the numerator of the apportionment ratio shall be comprised of his Maine adjusted gross income, as defined in section 5102, subsection 1-C, paragraph A, for the portion of the taxable year during which he was a resident individual, plus his Maine adjusted gross income as defined in section 5102, subsection 1-C, paragraph B, for the portion of the taxable year during which he was a nonresident individual. The part-year resident shall also be entitled to the credit provided by section 5127, subsection 1, computed as if the individual's Maine adjusted gross income for the entire year were comprised only of that portion which is attributed to the portion of the year during which he was a resident individual.

Sec. 42. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1986-87

FINANCE AND ADMINISTRATION,  
DEPARTMENT OF

Bureau of Taxation  
Positions

(5)

1986-87

Personal Services	\$181,200
All Other	45,500
Capital Expenditures	<u>45,500</u>
Total	\$272,200

Provides funding for one director, one certified public accountant, one computer systems analyst and one computer programmer analyst for tax enforcement and one Clerk IV for administration of tobacco products tax.

CORRECTIONS, DEPARTMENT OF

Fuel - Corrections	
All Other	\$(123,800)

DEFENSE AND VETERANS' SERVICES, DEPARTMENT OF

Military Training and Operations	
All Other	\$(67,250)

FINANCE AND ADMINISTRATION, DEPARTMENT OF

Buildings and Grounds Operations	
All Other	\$(156,500)

MENTAL HEALTH AND MENTAL RETARDATION, DEPARTMENT OF

Fuel for Institutions - Mental Health and Mental Retardation	
All Other	\$(152,450)

Deappropriates funds no longer necessary because of the drop in petroleum prices and the decrease in usage because of energy conservation throughout State Government.

1986-87

UNIVERSITY OF MAINE,  
BOARD OF TRUSTEES

Educational and General Activities-  
University of Maine  
All Other

\$15,000,000

Provides funds to implement the recommendations of the visiting committee to the University of Maine and other University of Maine planning priorities. These funds are to be considered part of the ongoing state commitment to the university.

EXECUTIVE DEPARTMENT

Development Office  
All Other

\$ 300,000

Provides funds for additional tourism promotion efforts.

TOTAL APPROPRIATION

\$15,072,200

Sec. 43. Application. Sections 17 and 19 to 41 shall apply to tax years beginning or or after January 1, 1986.

Emergency clause. In view of the emergency cited in the preamble, sections 1 to 16 and section 18 of this Act shall take effect June 1, 1986. The remainder of this Act shall take effect when approved.

Effective July 16, 1986 unless otherwise indicated.

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**CHAPTER 784**

H.P. 1307 - L.D. 1823

AN ACT to Create a Paralytic Shellfish Poison  
Monitoring Program.