

# MAINE STATE LEGISLATURE

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

AS PASSED BY THE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE

**FIRST SPECIAL SESSION**

October 9, 1987 to October 10, 1987

**SECOND SPECIAL SESSION**

October 21, 1987 to November 20, 1987

and the

**SECOND REGULAR SESSION**

January 6, 1988 to May 5, 1988

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

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Twin City Printery  
Lewiston, Maine  
1988

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**PUBLIC LAWS**

OF THE

**STATE OF MAINE**

AS PASSED AT THE  
FIRST AND SECOND SPECIAL SESSIONS  
and  
SECOND REGULAR SESSION  
of the  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
1987

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CHAPTER 841

H.P. 928 — L.D. 1244

AN ACT to Amend the Law Relating to Unitary Taxation of Corporations.

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

Sec. 1. 36 MRSA §5102, sub-§6-A is enacted to read:

6-A. 80-20 corporation. "80-20 corporation" means a corporation more than 80% of the aggregate property and payroll of which is located outside the 50 states of the United States and the District of Columbia and none of the property and payroll of which is located in this State.

Sec. 2. 36 MRSA §5102, sub-§8, as amended by PL 1983, c. 571, §14, is further amended to read:

8. Maine net income. "Maine net income" means, for any taxable year for any corporate taxpayer, the taxable income of that taxpayer for that taxable year under the laws of the United States as modified by ~~sections section~~ section 5200-A and 5202-B and allocated or apportioned and apportionable to this State under chapter 821. To the extent that it derives from a unitary business carried on by 2 or more members of an affiliated group, the Maine net income of a corporation shall be determined by apportioning that part of the federal taxable income of the entire group which derives from the unitary business, except income of an 80-20 corporation.

Sec. 3. 36 MRSA §5142, sub-§6, as enacted by P&SL 1969, c. 154, §F, is amended to read:

6. Apportionment. If a business, trade, profession or occupation is carried on partly within and partly without this State, the items of income and deduction derived from or connected with sources within this State shall be determined as ~~allocated or apportioned to this State under chapter 821 or in the case of the rendering of purely personal services by an individual under regulations to be prescribed by the assessor.~~

Sec. 4. 36 MRSA §5200-A, sub-§2, ¶E, as enacted by PL 1985, c. 855, §22, is amended to read:

E. For each of the taxable years ending in 1985 through 1987, 1/3 of the amount by which taxable income was increased for the taxable year ending in 1984 under subsection 1, paragraph G :

Sec. 5. 36 MRSA §5200-A, sub-§2, ¶F and G are enacted to read:

F. Income which this State is prohibited from taxing under the Constitution of Maine or the United States Constitution, provided that the amount subtracted

shall be decreased by any expenses incurred in production of that income to the extent that these expenses are deductible in determining federal taxable income; and

G. Fifty percent of the apportionable dividend income which the taxpayer received during the taxable year from an affiliated corporation which is not included with the taxpayer in a Maine combined report, except that this modification shall be phased in over 5 years in accordance with the following schedule:

<u>Taxable year beginning in:</u>	<u>Subtractable dividend income:</u>
1989	10%
1990	20%
1991	30%
1992	40%
1993 or thereafter	50%

Sec. 6. 36 MRSA §5206-B, sub-§2, as amended by PL 1987, c. 497, §50, is further amended to read:

2. Maine assets. "Maine assets" means, for any taxable year, a taxable entity's total end of year assets as required to be reported pursuant to the laws of the United States on ~~United States~~ Internal Revenue Service Form 1120, Schedule L, except for tangible personal property and real property located outside the State. The term includes, in the case of a unitary business, the tangible personal property and real property located in the State of any member of the affiliated group which is not subject for the taxable year to taxation under Part 8. This property in the possession of a taxable entity at year-end and located in the State is to be reported as a Maine asset by the possessor taxable entity.

Sec. 7. 36 MRSA §5206-B, sub-§3, as repealed and replaced by PL 1985, c. 783, §35, is amended to read:

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~~ pursuant to the laws of the United States on 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.

Sec. 8. 36 MRSA c. 821, first 2 lines are repealed and the following enacted in their place:

CHAPTER 821

APPORTIONMENT OF INCOME

Sec. 9. 36 MRSA §5210, sub-§§1, 2 and 4, as enacted by PL 1981, c. 698, §187, are repealed.

Sec. 10. 36 MRSA §5211, sub-§§1 and 2, as enacted by P&SL 1969, c. 154, §F, are amended to read:

1. Apportionment. Any taxpayer, other than a resident individual, estate, or trust, having income from business activity which is taxable both within and without this State, other than the rendering of purely personal services by an individual, shall ~~allocate and~~ apportion his net income as provided in this section. Any taxpayer having income solely from business activity taxable within this State shall ~~allocate or~~ apportion his entire net income to this State.

2. Taxpayer taxable in another state. For purposes of ~~allocation and~~ apportionment of income under this section, a taxpayer is taxable in another state if in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether in fact, the state does or does not.

Sec. 11. 36 MRSA §5211, sub-§§3, 4, 5, 6 and 7, as enacted by P&SL 1969, c. 154, §F, are repealed.

Sec. 12. 36 MRSA §5211, sub-§8, as enacted by P&SL 1969, c. 154, §F, is amended to read:

8. Formula for apportionment of income to State. All ~~business~~ income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is 3.

Sec. 13. 36 MRSA §5211, sub-§17, as enacted by P&SL 1969, c. 154, §F, is amended to read:

17. Variations. If the ~~allocation and~~ apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for, or the tax assessor may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- A. Separate accounting;
- B. The exclusion of any one or more of the factors;
- C. The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or
- D. The employment of any other method to effectuate an equitable ~~allocation and~~ apportionment of the taxpayer's income.

Sec. 14. 36 MRSA §5244, as enacted by PL 1985, c. 675, §§3 and 5, is amended to read:

§5244. Combined report

The combined report required by section 5220, subsection 5, shall include, both in the aggregate and by corporation, a list of the federal taxable income, the modifications provided by section 5200-A, the property, payroll and sales in Maine and everywhere as defined in chapter 821 and the Maine net income of the unitary business. Neither the income nor the property, payroll and sales of a ~~member~~ corporation which is not required to file a federal income tax return or of an 80-20 corporation may be included in the combined report.

Effective August 4, 1988.

**CHAPTER 842**

H.P. 1784 — L.D. 2445

**AN ACT to Protect Lake Water from Phosphorous Pollution.**

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

Sec. 1. 38 MRSA §390-A, sub-§1, as amended by PL 1987, c. 192, §9, is further amended to read:

1. Fund purposes and administration. There is established a nonlapsing Lake Restoration and Protection Fund, from which the department may pay up to 50% of the eligible costs incurred in a lake restoration or protection project, except that projects addressing technical assistance, public education or research issues may be paid up to 100%. Eligible costs include all costs except those related to land acquisition, legal fees and debt service. All money credited to that fund shall be used by the department for projects to improve or maintain the quality of lake waters in the State and for no other purpose. The Commissioner of Environmental Protection may authorize the State Controller to draw his warrant for such funds as may be necessary to pay the lawful expenses of the lake restoration or protection project, up to the limits of the money duly authorized. Any balance remaining in the fund shall continue without lapse from year to year and remain available for the purposes for which the fund is established and for no other purpose.

Sec. 2. 38 MRSA §390-A, §§3 to 5 are enacted to read:

3. Intensive staffing program. The department shall establish an intensive staffing program which shall provide adequate staffing at both the state and regional levels. The department shall provide technical information and guidance and the regional agencies shall assist with the adoption of revised comprehensive plans, standards and local ordinances by local governments.