

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST SPECIAL SESSION

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
July 14, 1990

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

J.S. McCarthy Company
Augusta, Maine
1990

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

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ONE HUNDRED AND FOURTEENTH LEGISLATURE

January 3, 1990 to April 14, 1990

6. Contractor liability. Except as provided in subsection 7, a contractor that closes a municipal solid waste landfill in compliance with a closure plan approved by the department is not liable for the death of or injury to persons or for property damages resulting from contamination or a discharge of pollutants if:

A. The discharge is at or from the landfill site or the contamination resulted from a discharge at or from the landfill site; and

B. The contamination or discharge is related to on-site landfill closure activities.

7. Exceptions. Nothing in subsection 6 affects the liability of a contractor:

A. For its employees under Title 39; or

B. Under state and federal criminal laws.

Sec. 3. **38 MRSA §1310-D, sub-§5** is enacted to read:

5. Certification of completion. A municipality that engages a contractor to close a landfill under a plan approved by the department shall hire a licensed engineer independent of the contractor to, at a minimum, monitor, evaluate and report on all on-site landfill closure activities performed by the contractor. Upon completion of the closure work in compliance with the plan approved by the department, that engineer shall provide the department and municipality with a written report that certifies that the work performed by the contractor conforms with the plan approved by the department and all applicable laws and regulations. The cost to the municipality to engage the licensed engineer is a cost of closure under section 1310-F. No later than 60 days after receipt of the engineer's report, the department shall accept or reject the engineer's certification. If the department rejects the certification, the department shall identify and direct the municipality to undertake any measures necessary for completion of the closure in compliance with the plan.

Sec. 4. **38 MRSA §1310-F, sub-§3** is enacted to read:

3. Insurance. Notwithstanding subsection 1, the department may not issue a grant under this section to a municipality for the costs of closure unless the municipality demonstrates to the department that each person who will perform work to implement the closure plan is self-insured or is covered by a workers' compensation insurance policy in accordance with Title 39.

Sec. 5. Study; liability and insurance for landfill closures. The Joint Standing Committee on Legal Affairs shall study the following issues regarding the closure of municipal solid waste landfills under the Maine Revised Statutes, Title 38, chapter 13, subchapter I-A:

1. The liability of contractors under state and federal law for a release or discharge of pollutants from a landfill during closure activities and after closure is completed;

2. The availability and cost of insurance coverage for contractors that undertake closure activities;

3. State or municipal indemnification of contractors;

4. The ability of insurers to form a joint underwriting association to provide liability coverage to contractors;

5. The ability of municipalities to self-insure under Title 30-A, section 2253;

6. The ability of contractors, with the assistance of the Bureau of Insurance, to receive needed liability coverage pursuant to a market assistance plan;

7. Options under existing law for providing reimbursement for damages to persons and property harmed by contamination or discharge of pollutants;

8. The liability of the State and municipalities under state and federal law as a result of contamination or discharge of pollutants;

9. In cooperation with the Bureau of Insurance, the actual losses due to pollution liability experienced during the preceding 5 years by contractors in the State;

10. The experience of contractors and insurers in other states regarding liability for damages caused by closure of municipal landfills; and

11. Any other issue consideration of which the committee determines is necessary for an understanding of pertinent insurance and liability issues.

The committee shall conduct its study during the First Regular Session of the 115th Legislature and, by April 16, 1991, develop legislation necessary to facilitate prompt and environmentally sound closure of landfills under Title 38, chapter 13, subchapter I-A.

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

Effective April 19, 1990.

CHAPTER 871

S.P. 868 - L.D. 2228

An Act Concerning Technical Changes to the
Tax Laws

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

Whereas, certain corrections and additions to the taxation-related laws must be made as soon as possible to avoid unintended problems; and

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

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

Sec. 1. 30-A MRSA §5681, sub-§7 is enacted to read:

7. Indian territory. For purposes of state-municipal revenue sharing, the Passamaquoddy Tribe and the Penobscot Nation Indian Territories shall be treated as if they were municipalities. In the absence of a levy of real and personal property taxes in either or both Indian territories, the property tax assessment is computed by multiplying the state valuation for the Indian territory for the period for which revenue sharing is being determined by the most current average equalized property tax rate of all municipalities in the State at that time as determined by the State Tax Assessor.

Sec. 2. 36 MRSA §151, as amended by PL 1981, c. 364, §9, is further amended to read:

§151. Review of decisions of State Tax Assessor

Any person who is subject to an assessment by the State Tax Assessor or entitled by law to receive notice of a determination of the State Tax Assessor and who is aggrieved ~~by that determination as a result of that action~~ may petition request in writing, within ~~45~~ 30 days after receipt of notice of that ~~determination, for such a decision,~~ reconsideration by the State Tax Assessor of that ~~determination~~ decision.

If a ~~petition request~~ for reconsideration is filed within the specified time period, the State Tax Assessor shall reconsider ~~his determination~~ the decision. If the ~~petitioner has so requested in his petition~~ person requesting reconsideration at the same time also requests, in writing, an informal conference, the State Tax Assessor shall ~~held~~ provide an opportunity for an informal conference with the ~~petitioner~~ person to receive additional information and to hear argument regarding the ~~protested determination and decision.~~ The State Tax Assessor shall give the ~~petitioner 10 days'~~ person 10 days' notice of the time and place of the conference. The reconsideration, with or without an informal conference, ~~shall is not be deemed to be an "adjudicatory proceeding"~~ within the meaning of that term in the Maine Administrative Procedure Act.

The State Tax Assessor's decision on reconsideration constitutes final agency action which is subject to review by the Superior Court in accordance with the Maine Administrative Procedure Act, except that the absence of a record ~~shall~~ must be resolved exclusively by a hearing de novo on review.

Sec. 3. 36 MRSA §673, sub-§2-A, as amended by PL 1989, c. 753, §4, is further amended to read:

2-A. Amount of exemption. Every person who has the legal title or beneficial title in equity to real property in this State and who resides on that real property, and in good faith makes the same that person's permanent residence or the permanent residence of another or others legally or naturally dependent on that person, is entitled to an exemption from all taxation, except for assessments for special benefits, of 5% of just valuation up to the just valuation of \$50,000 on the residence and contiguous real property. The title may be held jointly or in common with others, and the exemption may be apportioned among the owners who reside on the property, to the extent of their respective interests; but no exemption of more than 5% of the first \$50,000 of just value may be allowed to any one person or on any one dwelling house, except that an exemption up to 5% of the first \$50,000 of just value may be allowed on each apartment occupied by a tenant-stockholder or member of a cooperative apartment corporation and on each condominium parcel occupied by the owner; and the amount of the exemption allowed any person is not to exceed the proportionate just valuation based on the interest owned by that person. This subsection takes effect on April 1, 1991.

Sec. 4. 36 MRSA c. 105, sub-c. V-A, as enacted by PL 1989, c. 411, §§1 and 2, is repealed.

Sec. 5. 36 MRSA §1752, sub-§11, as amended by PL 1989, c. 501, Pt. V, §§2, 5 and 6; c. 501, Pt. V, §§3 and 6; and c. 533, §§1 and 14, is repealed and the following enacted in its place:

11. Retail sale. "Retail sale" means any sale of tangible personal property in the ordinary course of business for any purpose other than for resale, except resale as a casual sale, in the form of tangible personal property. "Retail sale" also means any sale of a taxable service in the ordinary course of business for any purpose other than for resale, except resale as a casual sale.

A. "Retail sale" includes:

(1) 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; and

(2) 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 de-

rived through sales from vending machines are more than 50% of the retailer's gross receipts. The tax must be paid by the retailer to the State.

B. "Retail sale" does not include:

(1) Any casual sale;

(2) Any sale by a personal representative in the settlement of an estate, unless the sale is made through a retailer, or unless the sale is made in the continuation or operation of a business;

(3) The sale to a person engaged in the business of renting automobiles, of automobiles, integral parts of automobiles or accessories to automobiles, for rental or for use in an automobile rented, on a short-term basis; or

(4) The sale to a person engaged in the business of renting video tapes and video equipment, of video tapes or video equipment for rental.

Sec. 6. 36 MRSA §1752, sub-§14, ¶B, as repealed and replaced by PL 1987, c. 497, §24, is amended to read:

B. "Sale price" does not include:

(1) Discounts allowed and taken on sales;

(2) Allowances in cash or by credit made upon the return of merchandise or with respect to fabrication services pursuant to warranty;

(3) The price of property returned or fabrication services rejected by customers, when the full price is refunded either in cash or by credit;

(4) The price received for labor or services used in installing or applying or repairing the property sold or fabricated, if separately charged or stated;

(5) Any amount charged or collected, in lieu of a gratuity or tip, as a specifically stated service charge, when that amount is to be disbursed by a hotel, motel, restaurant or other eating establishment to its employees as wages;

(6) The amount of any tax imposed by the United States ~~upon~~ on or with respect to retail sales, whether imposed upon the retailer or the consumer, except any manufacturers', importers', alcohol or tobacco excise tax; ~~or~~

(7) The cost of transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, provided that those charges are separately stated and the transportation occurs by means of common carrier, contract carrier or the United States mail;

(8) The fee imposed by Title 10, section 1169, subsection 11;

(9) The fee imposed by section 4832, subsection 1; or

(10) The lead-acid battery deposit imposed by Title 38, section 1604, subsection 2-B.

Sec. 7. 36 MRSA §1752, sub-§17 is amended to read:

17. Tangible personal property. "Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but ~~shall~~ does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. "Tangible personal property" includes electricity.

Sec. 8. 36 MRSA §1752, sub-§23, as enacted by PL 1989, c. 533, §§4 and 14, and c. 588, Pt. C, §2, is repealed and the following enacted in its place:

23. Video tapes; video equipment. "Video tapes" means prerecorded magnetic tapes used for noncommercial playback of images and sound on video equipment. It also includes other electronic audio and video media that provide for noncommercial interactive utilization by a person or persons. "Video equipment" means equipment used to play back video tapes, equipment used for recording images and sound for subsequent noncommercial playback and equipment used for noncommercial interactive utilization of electronic audio and video media.

Sec. 9. 36 MRSA §1752, sub-§24 is enacted to read:

24. Watercraft. "Watercraft" means any type of vessel, boat, canoe or craft designed for use as a means of transportation on water, other than a seaplane, including motors, electronic and mechanical equipment and other machinery, whether permanently or temporarily attached, which are customarily used in the operations of the watercraft.

Sec. 10. 36 MRSA §1760, sub-§§9-E and 9-F are enacted to read:

9-E. Electricity consumed in an electrolytic process. Electricity separately metered and consumed in any electrolytic process for the manufacture of tangible personal property for later sale. This subsection is repealed on July 1, 1991.

9-F. Fuel oil or coal. 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. This subsection is repealed on July 1, 1991.

Sec. 11. 36 MRSA §1760, sub-§12-A is enacted to read:

12-A. Packaging materials. Sales of containers, boxes, crates, bags, cores, twines, tapes, bindings, wrappings, labels and other packing, packaging and shipping materials to persons for use in packing, packaging or shipping tangible personal property sold by them or on which they have performed the service of cleaning, pressing, dyeing, washing, repairing or reconditioning in their regular course of business that are transferred to the possession of the purchaser of that tangible personal property.

Sec. 12. 36 MRSA §1760, sub-§66, as enacted by PL 1989, c. 502, Pt. B, §47, and c. 581, §20, is repealed and the following enacted in its place:

66. Incorporated nonprofit providers of certain support systems for single-parent families. Sales to incorporated nonprofit organizations engaged primarily in providing support systems for single-parent families for the development of psychological and economic self-sufficiency.

Sec. 13. 36 MRSA §1760, sub-§67, as enacted by PL 1989, c. 501, Pt. P, §30, and c. 533, §8, is repealed and the following enacted in its place:

67. Nonprofit home construction organizations. Sales to local branches of incorporated nonprofit organizations whose purpose is to construct low-cost housing for low-income people.

Sec. 14. 36 MRSA §1760, sub-§70, as enacted by PL 1989, c. 533, §8, is amended to read:

70. Organizations providing certain services for hearing-impaired persons. Sales to incorporated nonprofit organizations whose primary purposes are to promote public understanding of hearing impairment and to assist hearing-impaired persons through the dissemination of information about hearing impairment to the general public and referral to and coordination of community resources available to hearing-impaired persons; and.

Sec. 15. 36 MRSA §1760, sub-§§72 to 75 are enacted to read:

72. Nonprofit housing development organization. Sales to nonprofit organizations for the development of housing for low-income people.

73. Seedlings for commercial forestry use. Sales of tree seedlings for use in commercial forestry. This subsection takes effect September 1, 1990.

74. Property used in production. Sales of tangible personal property, other than fuel or electricity, that becomes an ingredient or component part of, or that is consumed or destroyed or loses its identity directly and primarily in either the production of tangible personal property for later sale or lease, other than lease for use in this State, or the production of tangible personal property pursuant to a contract with the United States Government or any agency of the United States Government. 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.

75. Certain meals and lodging. Meals or lodging provided to employees at their place of employment when the value of those meals or that lodging is allowed as a credit toward the wages of those employees.

Sec. 16. 36 MRSA §1811, first ¶, as amended by PL 1989, c. 533, §§10 and 14, and c. 588, Pt. B, §2, is repealed and the following enacted in its place:

A tax is imposed on the value of all tangible personal property and taxable services sold at retail in this State. The rate of tax is 10% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; 7% on the value of rental of living quarters in any hotel, rooming house, tourist or trailer camp and rental for a period of less than one year of an automobile; and 5% on the value of all other tangible personal property and taxable services. Value is measured by the sale price, except as otherwise provided.

Sec. 17. 36 MRSA §1812, sub-§1, ¶C, as enacted by PL 1989, c. 588, Pt. B, §3, is repealed and the following enacted in its place:

C. If the tax rate is 10%:

<u>Amount of Sale Price</u>	<u>Amount of Tax</u>
\$0.01 to \$0.05, inclusive	0¢
.06 to .15, inclusive	1¢
.16 to .20, inclusive	2¢
.21 to .30, inclusive	3¢
.31 to .40, inclusive	4¢
.41 to .50, inclusive	5¢
.51 to .60, inclusive	6¢
.61 to .70, inclusive	7¢
.71 to .80, inclusive	8¢
.81 to .90, inclusive	9¢
.91 to 1.00, inclusive	10¢

Sec. 18. 36 MRSA §5203, sub-§1, as repealed and replaced by PL 1989, c. 508, §20, is amended to read:

1. Noncorporate. A tax is imposed, for each taxable year, upon on every resident individual noncorporate taxpayer of this State, equal to the amount by which 3% of the excess of the taxpayer's alternative minimum tax-

able income, as defined in the Code, Section 55(b), over the taxpayer's Maine exemption amount, exceeds the taxpayer's liability for all other taxes under this Part, except withholding taxes, and that portion of the ~~individual~~ income tax arising from modifications pursuant to section 5122, subsection 1. For purposes of this subsection, "Maine exemption amount" means the sum of the taxpayer's exemption amount, as defined in the Code, Section 55(d) and, to the extent included in the taxpayer's alternative minimum taxable income, the taxpayer's income from obligations of the United States and railroad retirement benefits. Additionally, a tax is imposed for each taxable year on every nonresident ~~individual~~ noncorporate taxpayer with Maine-source Maine-source income equal to the tax computed under this subsection, as if the nonresident were a resident, and multiplied by the ratio of the nonresident's Maine-source alternative minimum taxable income to the nonresident's total alternative minimum taxable income.

Sec. 19. 36 MRSA §5231, as amended by PL 1973, c. 12, §6, is further amended to read:

§5231. Extension of time for filing and payment

1. **General.** The assessor may grant a reasonable extension of time for payment of tax or estimated tax or any installment ~~thereof~~, or for filing any return, declaration, statement or other document required pursuant to this Part, on ~~such~~ terms and conditions ~~as he~~ the assessor may require. Except for a taxpayer who is outside the United States, ~~no such~~ an extension for filing any return, declaration, statement or document, ~~shall~~ may not exceed 8 months.

1-A. Federal extension. When a taxable corporation or taxable entity is granted an extension of time within which to file its federal income tax return for any taxable year, the due date for filing the taxpayer's income tax or franchise tax return with respect to the tax imposed by this Part is automatically extended for an equivalent period plus 30 days.

2. **Security.** If any extension of time is granted for payment of any amount of tax, the assessor may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted, on ~~such~~ terms and conditions ~~as~~ the assessor may require.

Sec. 20. 36 MRSA §6201, sub-§9, as enacted by PL 1987, c. 516, §§3 and 6, is amended to read:

9. **Income.** "Income" means the sum of Maine adjusted gross income determined in accordance with Part 8, the amount of capital gains excluded from adjusted gross income, the absolute value of the amount of trade or business loss, net operating loss carry-over, capital loss, rental loss, farm loss, partnership or S Corporation loss included in adjusted gross income, alimony, inheritance, life insurance proceeds paid on death of

insured, nontaxable lawsuit rewards, such as slander, libel and pain and suffering, excluding reimbursements such as medical and legal expenses associated with the case, support money, nontaxable strike benefits, the gross amount of any pension or annuity, including railroad retirement benefits, all payments received under the ~~United States~~ federal Social Security Act, state unemployment insurance laws, veterans' disability pensions, nontaxable interest received from the Federal Government or any of its instrumentalities, interest or dividends on obligations or securities of this State and its political subdivisions and authorities, workers' compensation and the gross amount of "loss of time" insurance, cash public assistance and relief, but not including relief granted under this chapter. ~~Income~~ does not include gifts from nongovernmental sources or surplus foods or other relief in kind supplied by a governmental agency.

Sec. 21. PL 1989, c. 683 is repealed.

Sec. 22. Effective date. The Maine Revised Statutes, Title 30-A, section 5681, subsection 7, as enacted by this Act, takes effect for distributions occurring from the Local Government Fund after July 1, 1990.

Sec. 23. Effective date. The Maine Revised Statutes, Title 36, chapter 105, subchapter V-A, as repealed by this Act, takes effect with regard to property tax years based on the status of property as of April 1, 1990, or thereafter.

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

Effective April 19, 1990, unless otherwise indicated.

CHAPTER 872

H.P. 1672 - L.D. 2314

An Act to Increase the Penalty for Vehicular Manslaughter and to Remove the Habitual Drunk Driver Offender from the Highways

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

Sec. 1. 17-A MRSA §203, sub-§3, ¶A, as enacted by PL 1989, c. 505, §2, is repealed and the following enacted in its place:

A. It is a defense to a prosecution of a manslaughter based upon the reckless or criminally negligent operation of a motor vehicle, which reduces the crime to a Class B crime, that the death of the victim resulted from conduct that would otherwise be defined only as a civil violation or civil infraction; and