

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION

December 12, 1991 to January 7, 1992

SECOND REGULAR SESSION

January 8, 1992 to March 31, 1992

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1992

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
1992

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

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ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

association to discharge covered claims. The requirements of this subsection ~~shall~~ apply to any excess reinsurance contract issued to any individual or group self-insurer as part of a self-insurance program approved for use within this State and ~~shall be~~ are in addition to any other requirement applicable to excess reinsurance contracts imposed by law or rule.

Excess insurance Reinsurance contracts ~~shall~~ must further specify that the excess reinsurance carrier and the Maine Self-Insurance Guarantee Association may enter into agreements on the terms of settlement and distribution of benefits accruing to claimants within the limits of the authority of the parties to make settlements with respect to any coverage year.

To the extent that the Maine Self-Insurance Guarantee Association succeeds to a recovery of benefits from any excess reinsurance carrier on behalf of claimants, those benefits ~~shall~~ must be timely disbursed by the association to or on behalf of claimants as they become due and payable pursuant to this Act. Funds recovered under primary excess reinsurance contracts on behalf of claimants ~~shall~~ must be applied consistent with the terms of coverage under the contract, to loss, loss adjustment expense and attorneys' fees ~~which that~~ are payable under the Act.

Sec. 13. 39 MRSA §23, sub-§8, as amended by PL 1989, c. 435, §12, is further amended to read:

8. Qualifications for reinsurance carriers. ~~No~~ A workers' compensation contract or policy issued after the effective date of this section may not be recognized by the superintendent in considering the ability of an individual or group self-insurer to fulfill its financial obligations under this Act, unless the contract or policy is issued by an admitted insurance company or a reinsurance company that meets on a continuous basis the requirements of Title 24-A, chapter 9, subchapter III and the reinsurance company has been approved by the Superintendent of Insurance to issue in this State contracts of primary workers' compensation reinsurance, or by Lloyd's of London, a syndicate of unincorporated alien insurers which that has established and maintains United States trust funds consistent with the requirements of Title 24-A, section 731, paragraph C chapter 9, subchapter III. Each contract of primary workers' compensation reinsurance that is proposed for use in this State must be filed for approval in the manner set out in Title 24-A, section 2412. Insofar as is practicable, a contract so approved may be modified with less than 30 days advance filing notice if the superintendent determines the modifications suggested are not contrary to provisions of Title 24-A, section 2412, this Title or Bureau of Insurance Rule Chapter 250 and are necessary to effect required reinsurance coverage to authorize the self-insurer to operate a plan of workers' compensation self-insurance.

Sec. 14. Rule required. The Bureau of Insurance shall adopt a rule by August 1, 1992 to adjust the

premium for the workers' compensation classification for professional hockey players to reflect the employer's contractual obligation to continue salary and medical benefits during the course of any injury.

Sec. 15. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

1992-93

PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF

Bureau of Insurance

Positions	(1.0)
Personal Services	\$44,490
All Other	1,500
Capital Expenditures	9,050
TOTAL	\$55,040

Provides funds for the salary, fringe benefits and general operating expenses of one Financial Analyst position and for computer equipment.

Sec. 16. Transition provision. The provisions of the Bureau of Insurance Rule Chapter 250 governing primary excess insurance apply to reinsurance contracts required or provided under this Act until the Bureau of Insurance has adopted conforming amendments to Chapter 250.

See title page for effective date.

CHAPTER 873

H.P. 1583 - L.D. 2233

An Act to Protect Taxpayer Rights by Amending the Taxpayer Bill of Rights and Making More Equitable Tax Penalty and Appeal Provisions

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

Sec. 1. 36 MRSA §112, sub-§1, as enacted by PL 1981, c. 364, §7, is amended to read:

1. General powers and duties. The State Tax Assessor shall administer and enforce the tax laws enacted under this Title and, pursuant to this Title, may make such adopt rules and require such information to be reported as ~~he deems~~ is necessary. The State Tax Assessor shall provide, at the time of issuance by the assessor, to one or more entities that publish a monthly state tax service all rules, bulletins, taxpayer notices or alerts, no-

tices of rulemaking, any other taxpayer information issued by the State Tax Assessor, and all amendments or modifications of the same, for publication by that entity or entities. When a significant change has occurred in Bureau of Taxation policy or practice or in the interpretation by the Bureau of Taxation of any law, rule or instruction bulletin, the State Tax Assessor shall, within 60 days of the change, provide to the same publishing entity or entities written notice, suitable for publication, of the change.

Sec. 2. 36 MRSA §112, sub-§4, as enacted by PL 1981, c. 364, §7, is amended to read:

4. Examination of records and premises. Whenever he deems it necessary to the administration of this Title, the State Tax Assessor may make, or cause to be made by his an employee, an examination or investigation of the place of business, books and other documents and any other relevant personal property of any person who the State Tax Assessor has reason to believe is liable for any tax imposed by this Title.

At the conclusion of an audit, the State Tax Assessor or an agent shall conduct an audit conference with the taxpayer and shall give the taxpayer a written summary of the audit findings, including the legal basis for the audit findings and adjustments, along with copies of relevant Bureau of Taxation audit workpapers.

Sec. 3. 36 MRSA §151, as amended by PL 1989, c. 848, §3 and c. 871, §2, is repealed and the following enacted in its place:

§151. Review of decision 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 as a result of that action may request in writing, within 30 days after receipt of notice of the assessment or the determination, reconsideration by the State Tax Assessor of the assessment or the determination.

If a request for reconsideration is filed within the specified time period, the State Tax Assessor shall reconsider the assessment or the determination. If the petitioner has so requested in the petition, the State Tax Assessor shall hold an informal conference with the petitioner to receive additional information and to hear arguments regarding the protested assessment or determination. The State Tax Assessor shall give the petitioner 10 working days' notice of the time and place of the conference. However, the conference may be held with less than 10 working days' notice if a mutually convenient time and place can be arranged between the petitioner and the State Tax Assessor. The reconsideration, with or without an informal conference, is not an "adjudicatory proceeding" within the meaning of that term in the Maine Administrative Procedure Act.

The State Tax Assessor's decision on reconsideration must be mailed to the taxpayer by certified or registered mail and the decision must set forth briefly the State Tax Assessor's findings of fact and the basis of decision in each case decided in whole or in part adversely to the taxpayer. The State Tax Assessor's decision on reconsideration constitutes final agency action that is subject to review by the Superior Court in accordance with the Maine Administrative Procedure Act, except that Title 5, sections 11006 and 11007 do not apply. The Superior Court shall conduct a de novo hearing and make a de novo determination of the merits of the case. It shall make its own determination as to all questions of fact or law. The Superior Court shall enter such orders and decrees as the case may require. The burden of proof is on the taxpayer.

Sec. 4. 36 MRSA §187, as amended by PL 1991, c. 546, §§2 to 6, is repealed.

Sec. 5. 36 MRSA §187-B is enacted to read:

§187-B. Penalties

1. Failure to file return. Any person who fails to make and file any return required under this Title at or before the time the return becomes due is liable for one of the following penalties.

A. If the return is filed before or within 30 days after the taxpayer receives from the State Tax Assessor a formal demand that the return be filed, the penalty is \$10 or 10% of the tax due, whichever is greater.

B. If the return is filed later than 30 days after the taxpayer receives from the State Tax Assessor a formal demand that the return be filed, the penalty is 100% of the tax due.

C. If the return is not filed and the State Tax Assessor issues a jeopardy assessment pursuant to section 141, subsection 2, paragraph D, the penalty is 100% of the tax due.

2. Failure to pay. The following penalties apply.

A. Any person who fails to pay, on or before the due date, any amount shown as tax on any return required under this Title is liable for a penalty of \$5 or 1% of the unpaid tax, whichever is greater, for each month or fraction of a month during which the failure continues, to a maximum in the aggregate of \$25 or 25% of the unpaid tax, whichever is greater.

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 is liable for

a penalty in the amount of \$25 or 25% of the amount of the tax due, whichever is greater, if the payment of the tax is not made within 10 days of the person's receipt of notice of demand for payment as provided by this Title. This penalty must be explained in the notice of demand and is final when levied.

3. Negligence; fraud. Any person who files a return under this Title that results in an underpayment of tax, any portion of which is attributable to negligence or intentional disregard of this Title or rules issued pursuant to this Title, but is not attributable to fraud with intent to evade the tax, is liable for a penalty in the amount of \$10 or 10% of that portion of the underpayment, whichever is greater. Any person who files a return under this Title that results in an underpayment of tax, any portion of which is attributable to fraud with intent to evade the tax, is liable for a penalty in the amount of \$75 or 75% of that portion of the underpayment, whichever is greater. For the purposes of this section, the term "negligence" means any failure to make a reasonable attempt to comply with the provisions of this Title.

This subsection is repealed on July 1, 1993.

4. Substantial understatement. Any person who files a return under this Title that results in an underpayment of tax, any portion of which is attributable to a substantial understatement of tax, is liable for a penalty of \$5 or 1% of that portion of the underpayment, whichever is greater, for each month or fraction of a month during which the failure to pay that portion of the underpayment continues, to a maximum in the aggregate \$25 or 25% of the underpayment, whichever is greater.

There is a substantial understatement of tax if the amount of the understatement on the return or returns for the period covered by the assessment exceeds 5% of the total tax required to be shown on the return or returns for that period or \$1,000, whichever is greater. For purposes of calculating whether an understatement is substantial and the amount of any substantial understatement that is subject to penalty under this subsection, the amount of any understatement is reduced by that portion of the understatement that is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment.

This subsection is repealed on July 1, 1993.

5. Insufficient funds check. Any person who makes payment of an amount due under this Title by means of a check that is returned unpaid by the bank on which it is drawn because of insufficient funds or the closing or nonexistence of the account on which it is drawn is liable for a penalty of \$10 or 1% of the check amount, whichever is greater.

6. Penalties not exclusive. Each penalty provided by this section is in addition to any interest and other penalties provided by this section and other law, except as otherwise provided in this section, and interest may not accrue on the penalty. This section does not apply to any filing or payment responsibility pursuant to Part 2. The penalties imposed by subsections 1 and 2 accrue automatically, without being assessed by the State Tax Assessor, and each penalty imposed by this section is recoverable by the State Tax Assessor in the same manner as if it were a tax assessed under this Title.

7. Reasonable cause. For reasonable cause, the State Tax Assessor shall waive or abate any penalty imposed by subsection 1; subsection 2, paragraphs A and B; and subsections 4 and 4-A. Reasonable cause includes, but is not limited to, the following:

A. The failure to file or pay resulted directly from erroneous information provided by the Bureau of Taxation;

B. The failure to file or pay resulted directly from the death or serious illness of the taxpayer or a member of the taxpayer's immediate family;

C. The failure to file or pay resulted directly from a natural disaster;

D. A return that was due monthly was filed less than one month late and all of the taxpayer's returns and payments during the preceding 12 months were timely;

E. A return that was due other than monthly was filed less than one month late and all of the taxpayer's returns and payments during the preceding 3 years were timely;

F. The taxpayer has supplied substantial authority justifying the failure to file or pay; or

G. The amount subject to a penalty imposed by subsections 1 and 2 is de minimis when considered in relation to the amount otherwise properly paid, the reason for the failure to file or pay and the taxpayer's compliance history.

The burden of establishing grounds for waiver or abatement is on the taxpayer.

For purposes of this section, the term "person" includes an individual, corporation or partnership or any officer or employee of a partnership who, as the officer, employee or member, is under a duty to perform the act in respect of which a violation occurs.

Sec. 6. 36 MRSA §187-B, sub-§3-A is enacted to read:

3-A. Negligence; fraud. Any person who files a return under this Title that results in an underpayment of tax, any portion of which is attributable to negligence or intentional disregard of this Title or rules issued pursuant to this Title, but is not attributable to fraud with intent to evade the tax, is liable for a penalty in the amount of \$25 or 25% of that portion of the underpayment, whichever is greater. Any person who files a return under this Title that results in an underpayment of tax, any portion of which is attributable to fraud with intent to evade the tax, is liable for a penalty in the amount of \$75 or 75% of that portion of the underpayment, whichever is greater. For the purposes of this section, the term "negligence" means any failure to make a reasonable attempt to comply with the provisions of this Title.

This subsection takes effect July 1, 1993.

Sec. 7. 36 MRSA §187-B, sub-§4-A is enacted to read:

4-A. Substantial understatement. Any person who files a return under this Title that results in an underpayment of tax, any portion of which is attributable to a substantial understatement of tax, without negligence or intentional disregard of this Title or rules or regulations issued under this Title and without fraud with intent to evade the tax, is liable for a penalty of \$5 or 1% of that portion of the underpayment, whichever is greater, for each month or fraction of a month during which the failure to pay that portion of the underpayment continues, to a maximum in the aggregate of \$25 or 25% of the underpayment, whichever is greater.

There is a substantial understatement of tax if the amount of the understatement on the return or returns for the period covered by the assessment exceeds 10% of the total tax required to be shown on the return or returns for that period or \$1,000, whichever is greater. For purposes of calculating whether an understatement is substantial and the amount of any substantial understatement that is subject to penalty under this subsection, the amount of any understatement is reduced by that portion of the understatement that is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment.

This subsection takes effect July 1, 1993.

Sec. 8. Effective date. Sections 4 and 5 of this Act takes effect August 1, 1992.

Sec. 9. Application dates. Section 5 of this Act is applicable to the assessment, accrual, waiver or abatement of penalties beginning on or after August 1, 1992, irrespective of the fact that the date as of which a penalty could have been assessed, accrued, waived or abated precedes August 1, 1992. Sections 6 and 7 of this Act

are applicable to the assessment of penalties beginning on or after July 1, 1993, irrespective of the fact that the date as of which a penalty could have been assessed precedes July 1, 1993.

See title page for effective date,
unless otherwise indicated.

CHAPTER 874

S.P. 798 - L.D. 1997

An Act to Amend the Law Regarding the Responsibilities of Code Enforcement Officers to Approve Plans or Technical Submissions by Architects

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

Whereas, delay in implementing changes in the law will result in undue burden on the citizens of the State and municipal code enforcement officers; and

Whereas, delay in implementing changes in the law will result in unnecessary confusion by people who are attempting to comply with Maine law; 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. 32 MRSA §225, last ¶, as enacted by PL 1991, c. 396, §20, is repealed.

Sec. 2. 32 MRSA §226, sub-§1, ¶E, as repealed and replaced by PL 1991, c. 396, §21, is repealed and the following enacted in its place:

E. Any person who is qualified under section 1251 to use the title "professional engineer" from performing any professional engineering service as authorized in section 1251. Such service includes, but is not limited to consultation, investigation, evaluation, planning, design and responsible supervision and administration of construction contracts in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects, and technical submissions, provided the person does only architectural or landscape architectural work that is incidental to the person's engineering work;