

# MAINE STATE LEGISLATURE

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

AS PASSED BY THE  
ONE HUNDRED AND FIFTEENTH LEGISLATURE

**THIRD SPECIAL SESSION**  
October 1, 1992 to October 6, 1992

**FOURTH SPECIAL SESSION**  
October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

**FIRST REGULAR SESSION**  
December 2, 1992 to July 14, 1993

THE GENERAL EFFECTIVE DATE FOR  
FIRST REGULAR SESSION  
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OCTOBER 13, 1993

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

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J.S. McCarthy Company  
Augusta, Maine  
1993

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

**AS PASSED AT THE**  
**FIRST REGULAR SESSION**

**of the**  
**ONE HUNDRED AND SIXTEENTH LEGISLATURE**

**1993**

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Licensure shall jointly study whether Medicaid reimbursement should be extended to licensed marriage and family therapists and licensed pastoral counselors. The boards shall consult with the Department of Human Services in preparing their recommendations. The boards shall submit a report, along with any necessary implementing legislation, to the Joint Standing Committee on Human Resources by January 1, 1994.

See title page for effective date.

## CHAPTER 394

### H.P. 587 - L.D. 791

#### **An Act to Eliminate the Prescription Requirement for Hypodermic Syringes**

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

**Sec. 1. 32 MRSA §13787**, as enacted by PL 1987, c. 710, §5, is repealed.

**Sec. 2. 32 MRSA §13787-A** is enacted to read:

#### **§13787-A. Sale of hypodermic apparatus**

**1. Authorized seller.** A hypodermic apparatus, as defined in Title 17-A, section 1101, subsection 2, may be sold only by a manufacturer or dealer of embalming supplies, manufacturer or dealer of medical or dental supplies, wholesale druggist, manufacturing pharmacist, pharmacist, veterinarian, agricultural supply store or manufacturer of surgical instruments.

**2. Purchaser.** Any person who is 18 years of age or older may purchase a hypodermic apparatus from a seller described in subsection 1.

**3. Criminal immunity.** Immunity from criminal prosecution is governed by the following.

A. A seller described in subsection 1 is "expressly authorized" within the meaning of Title 17-A, section 1110, subsection 1, paragraph A.

B. A seller described in subsection 1 or a purchaser described in subsection 2 is "expressly authorized" within the meaning of Title 17-A, section 1111, subsection 1, paragraph A.

**4. Immunity limited.** This section does not limit prosecution for violation of any law prohibiting or regulating the use, possession, dispensing, distribution or promotion of controlled substances, scheduled drugs or drug paraphernalia.

**5. Medicaid not affected.** This section does not diminish, expand or otherwise affect Medicaid reimbursement for hypodermic apparatuses.

See title page for effective date.

## CHAPTER 395

### S.P. 182 - L.D. 596

#### **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**, delay in making technical changes to the tax laws would interfere with administration of those laws; and

**Whereas**, legislative action is immediately necessary to ensure continued and efficient administration of the tax laws; 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. 33 MRSA §203, first ¶**, as amended by PL 1983, c. 635, is further amended to read:

Deeds and all other written instruments before recording in the registries of deeds, except those issued by a court of competent jurisdiction and duly attested by the proper officer thereof, and excepting plans and notices of foreclosure of mortgages and certain financing statements as provided in Title 11, section 9-401, and excepting notices of liens for internal revenue taxes and certificates discharging such liens ~~as provided in section 664 and excepting notices of liens for taxes assessed pursuant to Title 36, Part 1 and Parts 3 to 8 and Title 26, chapter 13, and releases discharging such liens, shall~~ must be acknowledged by the grantors, or by the persons executing any such written instruments, or by one of them, or by their attorney executing the same, or by the lessor in a lease or one of the lessors or ~~his lessor's~~ attorney executing the same, before a notary public in the State, or before an attorney-at-law duly admitted and eligible to practice in the courts of the State, if within the State; or before any clerk of a court of record having a seal, notary public or commissioner appointed by the Governor of this State for the purpose, or a commissioner au-

thorized in the State where the acknowledgment is taken, within the United States; or before a minister, vice-consul or consul of the United States or notary public in any foreign country.

**Sec. 2. 36 MRSA §151**, as amended by PL 1991, c. 824, Pt. B, §10 and repealed and replaced by c. 873, §3, is repealed and the following enacted in its place:

**§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 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. 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. If the requested reconsideration involves a denial or deemed denial of a refund claim, a refund claim with respect to which a conference has been requested under section 5280 or an assessment that is paid in full or part and the State Tax Assessor fails to mail to the taxpayer a decision on the reconsideration within 9 months after the reconsideration request was filed, the taxpayer may elect but is not obligated to deem the request for reconsideration denied. The taxpayer elects to deem the reconsideration denied by filing in Superior Court a petition for review of the deemed denial. The deemed denial constitutes final agency action and is subject to court review as otherwise provided in this section. The taxpayer may not make the deemed denial election after either the State Tax Assessor's reconsideration decision has been received by the taxpayer or the expiration of 9 years following the filing of the reconsideration request, whichever occurs first.

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. 3. 36 MRSA §175-A, sub-§1**, as enacted by PL 1987, c. 402, Pt. A, §179, is amended to read:

**1. Filing.** If any tax imposed by this Title is not paid when due and no further administrative or judicial review of the assessment is available pursuant to the Maine Administrative Procedure Act or section 151, the State Tax Assessor may file in the registry of deeds of any county or in the office in which a financing statement with respect to tangible personal property is properly filed with Title 11, section 9-401, subsection (1), paragraph (b); a notice of lien specifying the amount of the tax, interest, penalty and costs due, the name and last known address of the person liable for the amount and the fact that the State Tax Assessor has complied with all the provisions of this Title in the assessment of the tax. From the time of filing, the amount set forth in a certificate filed in a registry of deeds of a county constitutes a lien upon all real property in that county then owned or thereafter acquired by that person in the period before the expiration of the lien. From the time of filing, the amount set forth in a certificate filed in the office in which a financing statement with respect to personal property is properly filed constitutes a lien upon all personal property in this State then owned or thereafter acquired by that person in the period before the expiration of the lien, except that that The lien arises at the time the assessment becomes final and constitutes a lien upon all property, whether real or personal, then owned or thereafter acquired by that person in the period before the expiration of the lien. The lien imposed by this section is not valid against any mortgagee, pledgee, purchaser, judgment creditor or holder of a properly recorded security interest until notice of the lien has been filed by the State Tax Assessor, with respect to real property, in the registry of deeds of the county where such property is located and, with respect to personal property, in the office in which a financing statement for such personal property is normally filed. Notwithstanding the above, a tax lien upon personal property shall does not extend to those types of personal property which are not subject to perfection of a security interest by means of the filing under Title 11, sections 9-104, subsection (7); 9-104, subsection (12); 9-302, subsection (3); and 9-304. The lien shall be prior to any mortgage or security interest recorded, filed or otherwise perfected after the notice, other than a purchase money security interest perfected in accordance with Title 11, section 9-301, subsection (2) and Title 11, section 9-312, subsection (4). In the case of any mortgage or security interest properly

recorded or filed prior to the notice of lien ~~which that~~ secures future advances by the mortgagee or secured party, the lien ~~shall be~~ is junior to all advances made within 45 days after filing of the notice of lien, or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien. Subject to the limitations in this section, the lien provided in this section has the same force, effect and priority as a judgment lien and ~~shall continue~~ continues for ~~5 10~~ 10 years from the date of recording unless sooner released or otherwise discharged. The lien may, within the ~~5-year~~ 10-year period, or within 5 10 years from the date of the last extension of the lien in the manner provided in this subsection, be extended by filing for record in the appropriate office a copy of the notice and, from the time of filing, that lien ~~shall must~~ must be extended for 5 10 years unless sooner released or otherwise discharged.

**Sec. 4. 36 MRSA §176-A, sub-§9, ¶B,** as enacted by PL 1989, c. 880, Pt. E, §3, is amended to read:

B. The owners of any property sold as provided in subsection 6, their heirs, executors or administrators, or any person having any interest in or lien on the sold property, or any person in their behalf, are permitted to redeem the property sold at any time within 90 days after the sale of the property. The property may be redeemed upon payment to the assessor, for the use of the purchaser, or the heirs or assigns of the purchaser, of the amount paid by the purchaser and interest on that amount at the rate of ~~20% per annum interest established pursuant to section 186, together with the expenses of the proceeding.~~

**Sec. 5. 36 MRSA §176-A, sub-§16,** as amended by PL 1991, c. 846, §3, is further amended to read:

**16. Time for collection of taxes.** Taxes must be collected by levy within 10 years after the assessment of the tax, or prior to the expiration of any period of collection agreed upon in writing by the assessor and the taxpayer. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. Any levy action ordered by the assessor before the expiration of the 10-year period continues beyond the expiration of the 10-year period for a period of 6 months from the date such levy is first made or until the liability out of which such levy arose is satisfied or becomes unenforceable, whichever occurs first. The running of the 10-year period is stayed during the time that a consensual payment plan between the taxpayer and the assessor is in effect. When any question relative to the taxes is pending before any agency or court at the end of the 10-year period, the assessor's right to collect any tax due by levy continues until 6 years after the final determination of the question. When a taxpayer files for protection under the United States Bankruptcy Code, the assessor's right to collect any tax due by levy continues until 6 years

after the date of discharge or dismissal of the bankruptcy proceeding.

**Sec. 6. 36 MRSA §187-B, last ¶,** as enacted by PL 1991, c. 873, §5 and affected by §§8 and 9, is amended to read:

For purposes of this section, the term "person" includes an individual, corporation or partnership or any officer or employee of a corporation, including a dissolved corporation, or a member 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. 7. 36 MRSA §191, sub-§2, ¶F,** as amended by PL 1979, c. 127, §193, is further amended to read:

F. The transmission of information among employees of the Bureau of Taxation for the purposes of enforcing the tax laws of this State and the delivery by a register of deeds to the State Tax Assessor or delivery by the State Tax Assessor to the appropriate municipal assessor of "declarations of value" in accordance with section 4641-D;

**Sec. 8. 36 MRSA §208,** as amended by PL 1985, c. 764, §6, is further amended to read:

#### **§208. Equalization**

~~The Director of the Bureau of Taxation shall have~~ State Tax Assessor has the duty of equalizing the state and county taxes among the several towns and unorganized territory. ~~He~~ The State Tax Assessor shall equalize and adjust the assessment list of each town, by adding to or deducting from it such amount as will make it equal to its just value as of April 1st. Notice of the proposed valuations of municipalities within each county ~~shall~~ must be sent annually by certified mail to the ~~chairman~~ chair of the board of assessors, and ~~chairman~~ chair of the board of selectmen in municipalities having selectmen, of each municipality within that county on or before the first day of ~~September preceding the regular session of the Legislature~~ October. The valuation so determined is subject to review by the State Board of Property Tax Review pursuant to subchapter II-A, but the valuation finally certified to the Secretary of State pursuant to section 381 ~~shall must~~ be used for all computations required by law to be based upon the state valuation with respect to municipalities.

**Sec. 9. 36 MRSA §271, sub-§3,** as enacted by PL 1985, c. 764, §8, is amended to read:

**3. Procedures.** ~~Requests for appeals shall be mailed to the chairman of the Appeals to the board must be commenced by filing a petition for appeal with the board, with a . A copy of the petition must be mailed to the State Tax Assessor and to the assessor of the municipality where the property subject to appeal is located.~~

**Sec. 10. 36 MRSA §271, sub-§3-A** is enacted to read:

**3-A. Filing.** Petitions for appeal and all other papers required or permitted to be filed with the board must be filed with the secretary of the board. Filing with the secretary may be accomplished by delivery to the office of the board or by mail addressed to the secretary of the board. All papers to be filed that are transmitted by the United States Postal Service are deemed filed on the day the papers are deposited in the mail as provided in section 153.

**Sec. 11. 36 MRSA §653, sub-§1, ¶E**, as amended by PL 1989, c. 501, Pt. Z and c. 502, Pt. A, §128, is repealed and the following enacted in its place:

E. The word "veteran" as used in this subsection means any person, male or female, who was in active service in the Armed Forces of the United States during any federally recognized war period, the Korean Campaign or the Vietnam War and who, if discharged, retired or separated from the Armed Forces, was discharged, retired or separated under other than dishonorable conditions. A veteran of the Vietnam War must have served on active duty for a period of more than 180 days, any part of which must have occurred after August 4, 1964 and before May 7, 1975, except if the veteran died in service or was discharged for a service-connected disability after that date. "Vietnam War" means that period between August 5, 1964 and May 7, 1975;

**Sec. 12. 36 MRSA §843, sub-§§1 and 2**, as amended by PL 1985, c. 764, §17, are further amended to read:

**1. Municipalities.** ~~Where the~~ If a municipality has adopted a board of assessment review, if and the assessors or the municipal officers refuse to make the abatement asked for, the applicant may apply in writing to the board of assessment review within 60 days after notice of the decision from which the appeal is being taken or after the application is deemed to have been denied, and, if the board thinks ~~he the applicant~~ he the applicant is over-assessed, ~~he shall be the applicant~~ he the applicant is granted such reasonable abatement as the board thinks proper. Except with regard to nonresidential property with an equalized municipal value of \$500,000 or greater, either party may appeal from the decision of the board of assessment review directly to the Superior Court, in accordance with Rule 80B of the Maine Rules of Civil Procedure. If the board of assessment review fails to give written notice of ~~their~~ its decision within 60 days of the date the application is filed, unless the applicant agrees in writing to further delay, the application ~~shall be~~ is deemed denied and the applicant may appeal to Superior Court as if there had been a written denial or the applicant may appeal to the State Board of Property Tax Review ~~by following the procedures specified in subsection 2.~~

**2. Primary assessing areas.** If the chief assessor, municipal officer or the State Tax Assessor refuses to make the abatement asked for, the applicant may apply in writing to the State Board of Property Tax Review within 60 days after notice of the decision from which the appeal is being taken or after the application ~~shall be~~ is deemed to have been denied, and if the board thinks ~~he the applicant~~ he the applicant is over-assessed, ~~he shall be the applicant~~ he the applicant is granted such reasonable abatement as the board thinks proper. The decision of the State Board of Property Tax Review ~~shall be~~ is deemed final agency action by that board under the Maine Administrative Procedure Act. ~~Appeals to the State Board of Property Tax Review shall be directed to the Chairman of the State Board of Property Tax Review, who shall convene the board to hear the appeal and shall notify all parties of the time and place thereof.~~

**Sec. 13. 36 MRSA §844, sub-§1**, as amended by PL 1985, c. 819, Pt. A, §§38 and 39, is further amended to read:

**1. Municipalities without board of assessment review.** ~~Except where~~ when the municipality has adopted a board of assessment review or has been designated as a primary assessing area, if the assessors or the municipal officers refuse to make the abatement asked for, the applicant may apply to the county commissioners within 60 days after notice of the decisions from which the appeal is being taken or within 60 days after the application is deemed to have been denied. If the commissioners think that the applicant is over-assessed, the applicant ~~shall be~~ is granted such reasonable abatement as the commissioners think proper. If the applicant has paid the tax, ~~he shall the applicant must be~~ he the applicant must be reimbursed out of the municipal treasury, with costs in either case. If the applicant fails, the commissioners shall allow costs to the municipality, taxed as in a civil action in the Superior Court, and issue their warrant of distress against ~~him the applicant~~ the applicant for collection of such amount as may be due the municipality. The commissioners may require the assessors or municipal clerk to produce the valuation by which the assessment was made or a copy of it. Either party may appeal from the decision of the county commissioners to the Superior Court, in accordance with the Maine Rules of Civil Procedure, Rule 80B. If the county commissioners fail to give written notice of their decision within 60 days of the date the application is filed, unless the applicant agrees in writing to further delay, the application ~~shall be~~ is deemed denied and the applicant may appeal to the Superior Court as if there had been a written denial or the applicant may appeal to the State Board of Property Tax Review ~~by following the procedures specified in section 843, subsection 2.~~

**Sec. 14. 36 MRSA §1752, sub-§3-C**, as enacted by PL 1991, c. 780, Pt. CCC, §1, is repealed.

**Sec. 15. 36 MRSA §1760, sub-§23**, as repealed and replaced by PL 1991, c. 788, §6 and amended by c.

846, §21, is repealed and the following enacted in its place:

**23. Certain vehicles purchased by nonresidents.**

Sales of the following vehicles purchased by a nonresident and intended to be driven or transported outside the State immediately upon delivery by the seller:

A. Motor vehicles, except all-terrain vehicles as defined in Title 12, section 7851 and snowmobiles as defined in Title 12, section 7821;

B. Semitrailers;

C. Aircraft;

D. Truck bodies and trailers manufactured in the State; and

E. Camper trailers, including truck campers.

If the vehicles are registered for use in the State within 12 months of the date of purchase, the person seeking registration is liable for use tax on the basis of the original purchase price.

**Sec. 16. 36 MRSA §1951-A, sub-§2**, as amended by PL 1991, c. 780, Pt. Q, §2 and affected by §4, is further amended to read:

**2. Estimated payment.** Every retailer that had a tax liability under this Part in excess of \$250,000 for the preceding calendar year and is required to file a monthly return shall pay over to the State Tax Assessor by the 24th day of each month an amount equal to 80% of the retailer's liability under this Part for the corresponding month in the prior year or 80% of the retailer's liability under this Part for the actual month. Payments made pursuant to this subsection must be credited against tax due with the monthly return. The State Tax Assessor shall prescribe the voucher required to be filed with the payment. If the retailer does not file the required voucher, the amount of the retailer's liability is equal to an amount that is 80% of the retailer's liability under this Part for the corresponding month in the prior year.

When the business of a retailer required to make estimated payments pursuant to this section is transferred to a new owner, the successor business shall continue to make estimated payments and has the option of employing the sales made by the predecessor business during the 12 months preceding the transfer in determining its own estimated payments during the next 12 months. For purposes of this provision, "successor business" means a taxpayer that has acquired the organization, trade or business of a retailer required to make estimated payments pursuant to this section or that has acquired 50% or more of the assets thereof.

**Sec. 17. 36 MRSA §2013, sub-§1, ¶C**, as amended by PL 1989, c. 533, §13, is further amended to read:

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

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

(2) New or used watercraft ~~used directly and primarily for commercial fishing; and~~, nets, traps, cables, tackle and related equipment necessary to and used directly and primarily in the operation of a commercial fishing venture, but excluding motor vehicles as defined in section 1752, subsection 7.

**Sec. 18. 36 MRSA §2855, sub-§14**, as enacted by PL 1981, c. 711, §10, is amended to read:

**14. Net proceeds.** "Net proceeds" means a mining company's federal taxable income from the property with respect to a mine site (computed without allowance for ~~depletion~~) depletion as defined in Section 613 of the ~~code code~~ adjusted as follows:

A. The following deductions ~~shall be~~ are allowed in addition to those allowed in computing taxable income from the property under the code:

(1) Cost depletion as would be allowed under Section 611 of the code without regard to percentage depletion;

(2) Exploration and development costs as defined in Sections 616 and 617 of the code. Exploration and development costs incurred prior to the commencement of mining ~~shall~~ must be recovered proportionately over the life of the mine in the same manner as that provided in Section 611 of the code with respect to cost depletion. Exploration and development costs incurred after the commencement of mining ~~shall~~ must be recovered in the year incurred;

(3) Net operating loss deductions as defined in Section 172 of the code, but not including the exclusions under paragraph B; and

(4) Reasonable accruals for all reclamation, restoration and shut-down costs required by



state or federal laws, regulations or permits. These accruals ~~shall~~ must be made on a proportionate basis over the accrual period.

B. The following may not be allowed as deductions:

- (1) Property taxes paid ~~which~~ that are allowed as a credit against the tax provided by this chapter;
- (2) The tax provided by this chapter; and
- (3) Percentage depletion as allowed under Section 613 of the code.

**Sec. 19. 36 MRSA §5160**, as repealed and replaced by PL 1985, c. 783, §28, is amended to read:

**§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~~ trusts. The tax ~~shall~~ must be paid by the fiduciary.

**Sec. 20. 36 MRSA §5204-A**, as repealed and replaced by PL 1987, c. 504, §28, is amended to read:

**§5204-A. Early distribution from qualified retirement plans**

The tax imposed under this Part on any individual whose federal income tax for any taxable year is increased pursuant to the Code, ~~Section 72(t)~~, as a result of ~~a~~ an early distribution from a qualified retirement plan ~~shall~~ must be increased by an amount equal to 15% of the amount by which the individual's federal income tax was increased pursuant to Section 72(t) of the Code as a result of the early distribution.

**Sec. 21. 36 MRSA §5215, sub-§1**, as enacted by PL 1977, c. 722, is amended to read:

**1. Credit allowed.** A taxpayer, other than a public utility; as defined by Title 35 ~~35-A~~, section ~~15~~ 102, ~~shall~~ be allowed a credit to be computed as hereinafter provided against the tax imposed by this Part, subject to the limitations contained in subsection 3. The amount of the credit ~~shall equal~~ equals the qualified federal credit, as defined in subsection 2, for taxable years beginning on or after January 1, 1979.

**Sec. 22. 36 MRSA §5253, sub-§1**, as amended by PL 1991, c. 9, Pt. E, §25 and affected by §26, is further amended to read:

**1. General.** Every person required to deduct and withhold tax under this Part shall, for each calendar quarter, on or before the 21st day of the month following the

close of the calendar quarter or such other reporting period as the State Tax Assessor may require, file a withholding return and remit payment as prescribed by the State Tax Assessor. ~~Whenever, for federal income tax purposes under the Code, Section 6302 and regulations adopted to the Code, an employer is required to deposit withholding taxes on an 8th-monthly period, the employer shall pay over the amount required to be withheld by this Part to the State Tax Assessor within 3 days of the last day of each month for which the amount equals or exceeds \$3,000 or within 3 days of the end of any other 8th-monthly period for which the amount required to be withheld by this Part but not yet paid over during the month equals or exceeds \$3,000. All other persons shall pay over to the State Tax Assessor taxes required to be withheld by this Part at the time they are required to file a withholding return. The State Tax Assessor shall prescribe the voucher required to be filed with the payment payments.~~

**Sec. 23. 36 MRSA §5276-A**, as amended by PL 1991, c. 564, is further amended to read:

**§5276-A. Setoff of debts against refunds**

**1. Generally.** Any agency of the State, including the University of Maine System or the ~~Maine Vocational-Technical Institute~~ Maine Technical College System, ~~which~~ that is authorized to collect from any individual or corporation a liquidated debt greater than \$25 shall notify in writing the State Tax Assessor and supply information necessary to identify the debtor whose refund is sought to be set off. The State Tax Assessor, upon any such notification, shall assist the requesting agency by setting off that debt, pursuant to rules promulgated by the State Tax Assessor, against any refund to which that individual or corporation is entitled under this Part. Liquidated child support debts that the Department of Human Services has contracted to collect, pursuant to Title 19, section 448-A or 495, subsection 2, ~~shall be~~ are eligible, under the provisions of this section, for setoff against any refund due the obligated individual. The State Tax Assessor shall provide the creditor agency with the name, address and social security number of each debtor whose refund ~~will be~~ is subject to ~~offset~~ setoff.

**2. Notice and hearing.** ~~Before~~ At the time a setoff is made, the State Tax Assessor shall provide notice to the individual or corporate taxpayer of the ~~intended~~ set-off or setoffs and of the taxpayer's right to request, within ~~15~~ 30 days of the taxpayer's receipt of ~~that~~ the notice, a hearing before the creditor agency or agencies. The hearing or hearings are held pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, but are limited to the issues of whether the debt or debts became liquidated and whether any postliquidation events have affected the liability.

**3. Finalization of setoff.** ~~If, within 90 days of the notice to the taxpayer of the intended setoff or setoffs,~~

~~the agency or agencies requesting setoff certify to the State Tax Assessor either that the taxpayer did not make a timely request for hearing or that a hearing was held and a liquidated debt was determined after hearing to be due to that agency; the State Tax Assessor shall set off the liquidated debt against the refund due to the taxpayer. Otherwise, the State Tax Assessor shall release the entire refund to the taxpayer.~~

**3-A. Transfer of proceeds.** After providing the notice required by subsection 2, the assessor shall transfer the setoff refund amount to the creditor agency or agencies.

**3-B. Finalization of setoff; release of refund to taxpayer.** If the taxpayer fails to make a timely request for hearing or a hearing is held before the creditor agency and a liquidated debt is determined to be due to that agency, the setoff is final except as determined by further appeal. The creditor agency must release to the taxpayer any setoff refund amount determined after hearing not to be a liquidated debt due to the agency within 90 days of such determination or as otherwise provided by the creditor agency in a promulgated rule.

**4. Appeal.** The decision of the agency seeking setoff as to the existence of a liquidated debt constitutes final agency action appealable under the Maine Administrative Procedure Act, Title 5, chapter 375.

**5. Collection fee.** ~~Refund amounts which are set off under this section shall be transferred periodically by the State Tax Assessor to the creditor agency, except that a~~ A collection fee equal to the actual estimated costs incurred by the State Tax Assessor in assisting in the collection ~~shall must~~ annually be deducted from setoff refund amounts transferred to creditor agencies and deposited in the General Fund. If ~~the a~~ creditor agency is either entitled to federal matching funds against all debts collected or required by federal regulations to specially handle debts collected, the State Tax Assessor shall transfer to that agency the gross proceeds from setoffs made in its behalf, and that agency shall promptly reimburse the State Tax Assessor for the collection fee to the State Tax Assessor for deposit in the General Fund.

**6. Accounting.** The creditor agency shall credit the account of the individual whose refund has been set off with the full amount of the setoff, including the collection fee retained by, or reimbursed to, the State Tax Assessor.

**7. Priority.** In the event that claims from more than one agency are received by the State Tax Assessor with respect to one taxpayer, the State Tax Assessor shall set off against the refund due the taxpayer as many claims of the agencies as is possible in the following order of priority:

A. Liquidated child support debts owed to the Department of Human Services;

B. Fines owed to any of the courts; and

C. All other claims in the order of their receipt by the State Tax Assessor.

**8. Disclosure of information.** In any civil or criminal action in which a fine, forfeiture, order to pay or money judgment is entered in favor of the State or any agency or department thereof, or in any action in which counsel is appointed for an indigent party, the court may require the party so indebted to the State, its agencies or department, or the party for whom counsel has been appointed, to provide that party's social security number and other financial information under oath and on such forms as may be prepared by the Judicial Department in order to effectuate the purposes of this section.

**Sec. 24. 36 MRSA §5280**, as amended by PL 1977, c. 694, §726, is further amended to read:

#### **§5280. Refund claim**

Every claim for refund ~~shall must~~ be filed with the assessor in writing and ~~shall~~ state the specific grounds upon which it is founded. The taxpayer may in writing along with the refund claim request an informal conference regarding the claim for refund, in which case the claim ~~shall be treated in the same way as the for refund is considered a request for reconsideration of an assessment under section 151 filed as of the date the refund claim is filed and is decided pursuant to section 151.~~ If the taxpayer has not requested a conference and the assessor denies the refund claim in whole or in part, or the refund claim is deemed denied under section 5282, the taxpayer may request reconsideration of the denial or deemed denial of the refund claim pursuant to section 151.

**Sec. 25. 36 MRSA §5282**, as enacted by P&SL 1969, c. 154, §F, §1, is repealed and the following enacted in its place:

#### **§5282. Refund claim deemed denied**

If the assessor fails to mail to the taxpayer, within 6 months after the filing of a refund claim with respect to which no conference has been requested pursuant to section 5280, a decision on that refund claim, the taxpayer may elect but is not obligated, prior to receipt by the taxpayer of the assessor's decision on the refund claim, to deem the claim denied. The taxpayer deems the refund claim denied by requesting reconsideration of the deemed denial pursuant to section 151.

**Sec. 26. 36 MRSA §5304**, as enacted by P&SL 1969, c. 154, §F, §1, is repealed.

**Sec. 27. 36 MRSA §6201, sub-§2**, as enacted by PL 1987, c. 516, §§3 and 6, is amended to read:

**2. Claimant.** "Claimant" means ~~a person~~ an individual who has filed a claim under this chapter and was domiciled in this State and owned or rented a homestead in this State during the entire calendar year preceding the year in which ~~he files~~ he files claim for relief under this chapter ~~is filed~~. When 2 individuals of a household are able to meet the qualifications for a claimant, they may determine between them as to who the claimant ~~shall be~~ is. If they are unable to agree, the matter ~~shall must~~ must be referred to the State Tax Assessor ~~and his whose~~ and his whose decision ~~shall be~~ is final. If a homestead is occupied by 2 or more individuals, and more than one individual is able to qualify as a claimant the individuals may determine among them as to who the claimant ~~shall be~~ is. If they are unable to agree, the matter ~~shall must~~ must be referred to the State Tax Assessor ~~and his whose~~ and his whose decision ~~shall be~~ is final. Ownership of a homestead under this chapter may be by fee, by life tenancy, by bond for deed, as mortgagee or any other possessory interest in which the owner is personally responsible for the tax for which ~~he claims~~ he claims a refund is claimed.

**Sec. 28. 36 MRSA §6201, sub-§9**, as amended by PL 1991, c. 149, is further 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 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 up to the first \$5,000 in the proceeds from a life insurance proceeds or policy, whether paid in a lump sum or in the form of an annuity. Income also does not include gifts from nongovernmental sources or surplus foods or other relief in kind supplied by a governmental agency.

**Sec. 29. 36 MRSA §6201, sub-§10**, as enacted by PL 1987, c. 516, §§3 and 6, is amended to read:

**10. Property taxes accrued.** "Property taxes accrued" means property taxes exclusive of special assessment, delinquent interest and charges for service levied

on a claimant's homestead in this State as of April 1, 1972, or any tax year thereafter. If a homestead is owned by 2 or more persons or entities as joint tenants or tenants in common, and one or more persons or entities are not ~~a member~~ members of the claimant's household, "property taxes accrued" is that part of property taxes levied on the homestead ~~which that~~ which that reflects the ownership percentage of the claimant and ~~his the~~ his the claimant's household. If a claimant and spouse own their homestead part of the preceding tax year and rent it or a different homestead for part of the same tax year, "property taxes accrued" means only taxes levied on the homestead when both owned and occupied by the claimant on April 1st, multiplied by the percentage of 12 months that such property was owned and occupied by the household as its homestead during the preceding tax year. When a household owns and occupies 2 or more different homesteads in this State in the same tax year, property taxes accrued ~~shall~~ relate only to that property occupied by the household as a homestead on April 1st. If a homestead is an integral part of a larger unit such as a farm, or a multipurpose or multidwelling building, property taxes accrued ~~shall be~~ are that percentage of the total property taxes accrued ~~as that~~ as that the value of the homestead is of the total value, except that property taxes accrued do not include any portion of taxes claimed as a business expense for federal income tax purposes. For purposes of this chapter, "unit" refers to the parcel of property separately assessed of which the homestead is a part.

**Sec. 30. 36 MRSA §6202**, as enacted by PL 1987, c. 516, §§3 and 6, is amended to read:

#### **§6202. Claim is personal**

The right to file a claim under this chapter ~~shall be~~ is personal to the claimant and ~~shall does~~ does not survive ~~his the~~ the claimant's death, but the right may be exercised on behalf of a claimant by ~~his the~~ his the claimant's legal guardian or attorney-in-fact. If a claimant dies after having filed a timely claim, the amount thereof ~~shall must~~ must be disbursed to another member of the household as determined by the State Tax Assessor.

If the claimant was the only member of ~~his a~~ his a household, the claim may be paid to ~~his the~~ his the claimant's personal representative, but if one is not appointed within 2 years of the filing of the claim, the amount of the claim ~~shall escheat~~ escheats to the State.

**Sec. 31. 36 MRSA §6251, sub-§1**, as amended by PL 1989, c. 713, §2 and c. 875, Pt. E, §50, is repealed and the following enacted in its place:

**1. Filing claim.** Subject to section 6252, an individual or 2 or more individuals jointly may elect to defer the property taxes on their homestead by filing a claim for deferral with the municipal assessor after January 1st but no later than April 1st of the first year in which deferral is claimed if:

A. The individual or each individual, in the case of 2 or more individuals filing a claim jointly, is 65 years of age or older on April 1st of the year in which the claim is filed; and

B. The individual or, in the case of 2 or more individuals filing a claim jointly, all the individuals together have household income, as defined in section 6201, subsection 7, of less than \$32,000 for the calendar year immediately preceding the calendar year in which the claim is filed.

The municipal assessor shall forward each claim filed under this subsection to the bureau within 30 days of receipt and the bureau shall determine if the property is eligible for deferral.

Claims from new applicants may not be filed pursuant to this chapter prior to January 1, 1994. For purposes of this section, "new applicants" means any person or persons that have not filed claims prior to April 1, 1991.

**Sec. 32. Application.** Those sections of this Act that amend the Maine Revised Statutes, Title 36, sections 151, 5280 and 5282 apply to reconsideration requests and refund claims pending before the State Tax Assessor prior to the effective date of this Act, as well as refund claims and reconsideration requests filed on or after the effective date of this Act, except that the 9 months and 9 years provided for in that section of this Act that amends Title 36, section 151 commences running on the effective date of this Act with respect to any reconsideration request filed prior to the effective date of this Act.

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

Effective June 21, 1993.

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## CHAPTER 396

**S.P. 321 - L.D. 974**

### **An Act to Amend the Laws Governing Legislative Ethics**

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

**Sec. 1. 17-A MRSA §602, sub-§2, ¶C,** as enacted by PL 1975, c. 499, §1, is amended to read:

C. "Pecuniary benefit" means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain; it does not include economic advantage applicable to the public generally, such as

tax reduction or increased prosperity generally. "Pecuniary benefit" does not include meals if the meals are provided by industry or special interest organizations as part of an informational program presented to a group of public servants.

See title page for effective date.

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## CHAPTER 397

**H.P. 159 - L.D. 211**

### **An Act Related to Lottery Machines**

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

**Whereas,** the selection for placement and removal of lottery machines is an ongoing process that currently lacks specific formal and consistent guidelines; and

**Whereas,** the development and implementation of a formal and consistent selection plan for lottery machines must be immediately addressed to ensure fairness to all applicants; 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. 8 MRSA §374, sub-§4** is enacted to read:

**4. Small businesses.** The commission shall adopt by rule a written plan that includes the placement of lottery machines in small businesses. The plan must be created and implemented by January 15, 1994. The commission shall report to the joint standing committee of the Legislature having jurisdiction over legal affairs before January 15, 1994, so that the committee may approve the plan before it is implemented. No further removals of lottery machines may take place after January 15, 1994 unless the plan is successfully implemented. The removal of a lottery machine and the reason for removal must be reported, within 30 days of the removal, to the joint standing committee of the Legislature having jurisdiction over legal affairs.

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

Effective June 21, 1993.

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