

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
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TITLE 3, SECTION 163-A, SUBSECTION 4

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owned or leased by or in the control of the State or any department or agency of the State or independent state agency. "State property" includes property purchased with funds, such as fees for conferences and seminars conducted by a state agency, received by or on behalf of the State or any department or agency outside of the normal system of accounts and controls.

Sec. 2. 5 MRSA §20-A, as amended by PL 1991, c. 780, Pt. Y, §8, is repealed and the following enacted in its place:

§20-A. Use and acquisition of state property

1. Use of state property. An employee of the State may not take state property off the premises of the State for personal use or for the use of others without prior written approval of the head of the department for which that employee works.

2. Acquisition of state property. Within 3 months of leaving office or employment with the State, an employee of the State, in accordance with rules adopted by the Commissioner of Administrative and Financial Services and this chapter, may purchase at fair market value state property that was assigned to the employee or state property of which the employee was the principal user at the time of that employee's employment. The commissioner, by rule, shall determine state property that may be offered for sale under this chapter. State property may not be offered for sale under this chapter until the commissioner determines that the property is eligible for sale and that no state agency has any need or use for the property. This section may not be interpreted to prohibit an employee of the State or any other person from purchasing state property at fair market value in accordance with this chapter as a gift to an employee of this State upon that employee's retiring or leaving office.

3. Return of state property. If an employee or former employee of the State is in possession of state property in violation of subsection 1, the State may bring an action for injunctive relief seeking the return of the state property. The action may be brought in Superior Court in the county where the alleged violation occurred, Kennebec County or the county where the person against whom the civil complaint is filed resides. If a violation of subsection 1 is established, the court may enjoin the violation and order the return of the state property.

See title page for effective date.

CHAPTER 281

H.P. 686 - L.D. 937

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 in order 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. 36 MRSA §112, sub-§1, as amended by PL 1991, c. 873, §1, is further 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~~ under Title 29-A, and may adopt rules and require such information to be reported as necessary. The ~~State Tax Assessor~~ 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, notices of rulemaking, any other taxpayer information issued by the ~~State Tax Assessor~~ assessor, and all substantive 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~~ bureau of any law, rule or instruction bulletin, the ~~State Tax Assessor~~ 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 §113, as enacted by PL 1989, c. 880, Pt. B, §1, is amended to read:

§113. Audit and collection expenses

Funds derived from contract audit and collection efforts are treated as revenues only to the extent that collections resulting from those efforts exceed the costs associated with the audit and collection efforts.

~~The State Tax Assessor shall annually report to the Legislature the costs and collections of the Maine Tax Amnesty Program established by chapter 913. The State Tax Assessor shall annually report to the joint standing committee of the Legislature having jurisdiction over taxation matters the costs and collections of programs administered pursuant to this section.~~

Sec. 3. 36 MRSA §114 is enacted to read:

§114. Contract services provided by the Bureau of Taxation

Notwithstanding any other provision of law, when the Bureau of Taxation provides a service to any state or quasi-state agency, the bureau shall bill that entity at what it determines, in conjunction with the entity served, to be a reasonable rate. An account may be established by the bureau for receipt of these revenues. This account must be used to defray costs associated with the facilities and personnel necessary to provide the services. The bureau shall annually report to the joint standing committee of the Legislature having jurisdiction over taxation matters the extent of such services provided and the details of revenues and costs involved.

Sec. 4. 36 MRSA §135, as enacted by PL 1979, c. 378, §3, is amended to read:

§135. Record-keeping requirements

~~1. Taxpayers. The State Tax Assessor shall by rule or regulation require persons subject to tax under this Title to keep such records as he deems the State Tax Assessor determines necessary for the reasonable administration of this Title and he shall determine the period for which all such records shall be preserved. Records pertaining to taxes imposed by chapters 371 and 575 and by Part 8 must be retained as long as is required by applicable federal law and regulation. Records pertaining to all other taxes imposed by this Title must be retained for a period of at least 6 years. They shall~~ 1. Taxpayers. Persons subject to tax under this Title shall maintain such records as the State Tax Assessor determines necessary for the reasonable administration of this Title and he shall determine the period for which all such records shall be preserved. Records pertaining to taxes imposed by chapters 371 and 575 and by Part 8 must be retained as long as is required by applicable federal law and regulation. Records pertaining to all other taxes imposed by this Title must be retained for a period of at least 6 years. The records must be kept in such a manner as to ensure their security and accessibility for inspection by the State Tax Assessor or any of his employees designated agent engaged in the administration of this Title. The period of preservation shall not exceed 7 years.

~~2. Bureau of Taxation. Returns filed under this Title or microfilm reproductions of those returns shall~~ 2. Bureau of Taxation. Returns filed under this Title or microfilm reproductions of those returns shall must be preserved for 3 years and thereafter until the State Tax Assessor orders their destruction.

Sec. 5. 36 MRSA §144 is enacted to read:

§144. Application for refund

1. Generally. A taxpayer may request a credit or refund of any tax imposed by this Title within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever period expires later. Every claim for refund must be submitted to the State Tax Assessor in writing and state the specific grounds upon which it is founded. The taxpayer may in writing request an informal conference regarding the claim for refund, in which case the claim for refund is considered a request for reconsideration of an assessment under section 151.

2. Exceptions. This section does not apply in the case of sales and use taxes imposed by Part 3, estate taxes imposed by chapter 575, income taxes imposed by Part 8 and any other tax imposed by this Title for which a specific statutory refund provision exists.

Sec. 6. 36 MRSA §171, as enacted by PL 1985, c. 691, §3, is amended to read:

§171. Demand letter

If any tax imposed by this Title is not paid on or before its due date and no further administrative or judicial review of the assessment is available under section 151, the State Tax Assessor, within 3 years after administrative and judicial review have been exhausted, may give the taxpayer notice of the amount to be paid, specifically designating tax, interest and penalty, and demand payment of that amount within 10 days of that taxpayer's receipt of notice. The notice shall must include a warning that, upon failure of that taxpayer to pay as demanded, the State Tax Assessor may proceed to collect the amount due by any collection method authorized by this Title. If the taxpayer has filed a petition for relief under the United States Bankruptcy Code, the running of the 3-year period of limitation imposed by this section is stayed until the bankruptcy case is closed or a discharge is granted, whichever occurs first.

Sec. 7. 36 MRSA §175-A, sub-§4 is enacted to read:

4. Recording fees part of tax liability. Fees paid by the State Tax Assessor to registrars of deeds for recording notices of lien pursuant to subsection 1 and notices of release of a lien pursuant to subsection 2 may be added to the tax liability that gave rise to the lien and may be collected by all the methods provided for in chapter 7.

Sec. 8. 36 MRSA §187-B, sub-§2, ¶¶A and B, as enacted by PL 1991, c. 873, §5 and affected by §§8 and 9, are amended to read:

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.

Sec. 9. 36 MRSA §187-B, sub-§7, ¶¶D and E, as enacted by PL 1991, c. 873, §5 and affected by §§8 and 9, are amended to read:

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

Sec. 10. 36 MRSA §653, sub-§1, ¶D-1, as amended by PL 1993, c. 739, §2, is further amended to read:

D-1. The estates up to the just value of \$47,500, having a taxable situs in the place of residence, for specially adapted housing units, of veterans who served in the Armed Forces of the United States during any federally recognized war period, including the Korean Campaign, the Vietnam War and the Persian Gulf War, and who are paraplegic veterans, ~~so called,~~ within the meaning of the ~~United States~~ Code, Title 38, Chapter 21, Section 2101, and who received a grant from the United States Government for ~~the specially adapted~~ any such housing, or of the unmarried widows of ~~the~~ such veterans. A veteran of the Vietnam War must have served on active duty for a period of more than 180 days, any part of which occurred after August 4, 1964 and before May 7, 1975, unless the veteran died in service or was discharged for a service-connected disability after that date. "Vietnam War" means the period between August 5, 1964 and May 7, 1975. "Persian Gulf War" means service on active duty between August 7, 1990 and April 11,

1991. The exemption provided in this paragraph applies to the property of the veteran including property held in joint tenancy with ~~that veteran's~~ a spouse.

Sec. 11. 36 MRSA §1752, sub-§1-B, as amended by PL 1993, c. 701, §1, is further amended to read:

1-B. Automobile. "Automobile," for purposes of subsection 17-A, ~~paragraphs B and~~ paragraph H, means a self-propelled 4-wheel motor vehicle designed primarily to carry passengers and not designed to run on tracks.

Sec. 12. 36 MRSA §1752, sub-§11, ¶B, as amended by PL 1993, c. 670, §1 and c. 701, §2, is repealed and the following enacted in its place:

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;

(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; or

(5) The sale, to a person engaged in the business of renting or leasing automobiles, of automobiles for rental or lease for one year or more.

Sec. 13. 36 MRSA §1752, sub-§17-A, ¶B, as enacted by PL 1987, c. 497, §25, is repealed.

Sec. 14. 36 MRSA §1752, sub-§17-A, ¶H, as enacted by PL 1993, c. 701, §5, is amended to read:

H. Rental or lease of an automobile ~~for more than one year.~~

Sec. 15. 36 MRSA §1760, sub-§49, as enacted by PL 1985, c. 535, §3, is amended to read:

49. Community action agencies. Sales to community action agencies designated in accordance with Title ~~§ 22,~~ section ~~3549~~ 5324, except sales,

storage or use for activities ~~which~~ that are mainly commercial enterprises;

Sec. 16. 36 MRSA §1760, sub-§68, as amended by PL 1993, c. 410, Pt. E, §23, is further amended to read:

68. Maine Science and Technology Foundation. Sales to institutions incorporated as nonprofit organizations that conduct scientific and technological research ~~solely~~ for the Maine Science and Technology Foundation and receive funding pursuant to Title 5, chapter 385;

Sec. 17. 36 MRSA §1764, as amended by PL 1991, c. 546, §23, is further amended to read:

§1764. Tax against certain casual sales

The tax imposed by chapters 211 to 225 must be levied upon all casual sales involving the sale of camper trailers, motor vehicles, special mobile equipment, livestock trailers, watercraft or aircraft except those sold for resale at retail sale or to a corporation, partnership, limited liability company or limited liability partnership when the seller is the owner of a majority of the common stock of the corporation or of the ownership interests in the partnership, limited liability company or limited liability partnership.

Sec. 18. 36 MRSA §1811, 6th ¶, as amended by PL 1995, c. 5, Pt. F, §1 and affected by Pt. F, §2, is further amended to read:

For the period beginning July 1, 1993 and ending June 30, 1995, the State Tax Assessor shall transfer each month to the Tourism Marketing and Development Fund all receipts of taxes imposed pursuant to this section 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, 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 on the value of ~~prepared food sold in establishments as defined in section 1752, subsection 8-A~~ food products served on the premises of retailers that are primarily engaged in the restaurant business, less transfers pursuant to Title 30-A, section 5681, subsection 5, in excess of the base General Fund revenue estimates effective July 1, 1993 for the previous month. The State Tax Assessor shall reduce any subsequent transfers to the Tourism Marketing and Development Fund by an amount equal to the amount of General Fund revenues defined in this paragraph that are below the base General Fund estimates effective July 1, 1993 for the previous month. This paragraph is repealed July 1, 1995.

Sec. 19. 36 MRSA §1811, last ¶, as enacted by PL 1993, c. 701, §7 and affected by §10, is amended to read:

Rental or lease of an automobile for ~~more than~~ one year or more must be taxed at the time of the lease or rental transaction at 6% of the following: the total monthly lease payment multiplied by the number of payments in the lease or rental, the amount of equity involved in any trade-in and the value of any cash down payment. Collection and remittance of the tax is the responsibility of the person that negotiates the lease transaction with the lessee.

Sec. 20. 36 MRSA §1812, sub-§1, ¶D is enacted to read:

D. If the tax rate is 10%:

<u>Amount of Sale Price</u>	<u>Amount of Tax</u>
<u>\$0.01 to \$0.10, inclusive</u>	<u>0¢</u>
<u>.11 to .20, inclusive</u>	<u>2¢</u>
<u>.21 to .40, inclusive</u>	<u>4¢</u>
<u>.41 to .60, inclusive</u>	<u>6¢</u>
<u>.61 to .80, inclusive</u>	<u>8¢</u>
<u>.81 to 1.00, inclusive</u>	<u>10¢</u>

Sec. 21. 36 MRSA §2726, sub-§6, as enacted by PL 1985, c. 514, §2, is amended to read:

6. Enforcement. The tax imposed by this chapter may be enforced by the ~~same~~ enforcement and collection procedures ~~as those provided for income taxes in chapter 835 7.~~

Sec. 22. 36 MRSA §4064, as enacted by PL 1981, c. 451, §7, is amended to read:

§4064. Tax on estate of nonresident

A tax is imposed upon the transfer of real property situated in this State and upon the transfer of tangible personal property ~~having an actual situs located~~ in this State of every person who at the time of ~~his~~ death was not a resident of this State. The amount of this tax is a sum equal to ~~the~~ that proportion of the credit for state death taxes provided by section 2011 of the code ~~which~~ that the value of Maine real and tangible personal property taxed in this State ~~which~~ that qualifies for the credit bears to the value of the decedent's total federal gross estate. All values ~~shall be~~ are as finally determined for federal estate tax purposes.

Proceeds from the sale of property are taxable under this section if such proceeds are included in the total federal gross estate and the sale was made in

contemplation of death. A sale of property made within 6 months prior to the death of the grantor is deemed to be in contemplation of death within the meaning of this section.

Sec. 23. 36 MRSA §4075-A is enacted to read:

§4075-A. Authority to make refunds

1. Refund. In the case of any overpayment of tax imposed by this chapter, the State Tax Assessor shall authorize the Treasurer of State to refund the overpayment and any applicable interest to the personal representative or the responsible party otherwise liable for the tax imposed by this chapter.

2. Limitation on payment of interest. Notwithstanding subsection 1, if any overpayment of tax imposed by this chapter is refunded within 3 months after the date prescribed or permitted by extension of time for filing the return of that tax or within 3 months after the return is filed or within 3 months after a return requesting a refund of the overpayment is filed, whichever is later, no interest may be paid by the assessor.

Sec. 24. 36 MRSA cc. 704-A and 705, as amended, are repealed.

Sec. 25. 36 MRSA §5102, sub-§8, as amended by PL 1991, c. 546, §32, is further amended to read:

8. Maine net income. "Maine net income" means, for any taxable year for any corporate taxpayer, the taxable income of that taxpayer for that taxable year under the laws of the United States as modified by section 5200-A and apportionable to this State under chapter 821. To the extent that it derives from a unitary business carried on by 2 or more members of an affiliated group, the Maine net income of a corporation is determined by apportioning that part of the federal taxable income of the entire group ~~which~~ that derives from the unitary business, except income of an 80-20 corporation. If a taxable corporation is an S corporation, "Maine net income" means the amount taxable at the federal level pursuant to the Code, ~~Section~~ Sections 1374 and 1375.

Sec. 26. 36 MRSA §5121, as repealed and replaced by PL 1989, c. 596, Pt. J, §3, is amended to read:

§5121. Taxable income

The ~~entire~~ taxable income of a resident individual of this State ~~shall be that~~ is equal to the individual's federal adjusted gross income as defined by federal law, as amended with the modifications, and

less the deductions and personal exemptions provided in this chapter.

Sec. 27. 36 MRSA §5125, sub-§2, as repealed and replaced by PL 1987, c. 819, §7, is amended to read:

2. Spouses. Spouses, both of whom are required to file returns under this Part, ~~shall be~~ are allowed to claim itemized deductions only if both do so. The total of itemized deductions allowable for determining federal income tax as adjusted by this section may be taken by either or divided between them, as they may elect, if their federal income tax is determined on a joint return but their tax pursuant to this Part is determined on ~~married~~ separate returns.

Sec. 28. 36 MRSA §5125, sub-§3, as enacted by PL 1987, c. 819, §7, is repealed and the following enacted in its place:

3. Amount. The sum of an individual's allowable federal itemized deductions must be:

A. Reduced by any amount representing income taxes imposed by this State or any other taxing jurisdiction and interest or expenses incurred in the production of income exempt from tax under this Part; and

B. Increased by any amount of interest or expense incurred in the production of income taxable under this Part but exempt from federal income tax, and which has not been deducted in determining federal adjusted gross income.

Sec. 29. 36 MRSA §5203-B, as enacted by PL 1991, c. 591, Pt. AAA, §1 and affected by §2, is amended to read:

§5203-B. Corporate income tax surcharge

In addition to the tax liability otherwise established by this Part, a tax surcharge of 10% of the total amount of state tax liability established by sections 5200 and 5203-A is imposed on taxable corporations for tax years beginning in 1991 or 1992.

Sec. 30. 36 MRSA §5204-B is enacted to read:

§5204-B. Certain capital gains of trusts

The tax imposed under this Part on any trust whose federal income tax for any taxable year is increased because of a capital gain on property transferred to the trust at less than fair market value must be increased by 30% of the amount by which the trust's federal income tax was increased pursuant to the Code, Section 644. This section applies to tax years beginning on or after January 1, 1995.

Sec. 31. 36 MRSA §5227, as amended by PL 1985, c. 535, §22, is further amended to read:

§5227. Time and place for filing returns and paying tax

The income tax return or franchise tax return required by this Part ~~shall~~ must be filed on or before the date a federal income tax return, (without regard to extension), is due to be filed. A taxpayer required to make and file a return under this Part shall, without assessment, notice or demand, pay any tax due thereon to the assessor on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). ~~The assessor shall prescribe by regulation the place for filing any return, declaration, statement or other document required pursuant to this Part and for the payment of any tax.~~

Sec. 32. 36 MRSA §5256, sub-§1, as enacted by P&SL 1969, c. 154, §F, is amended to read:

1. General. For purposes of the tax imposed by this Part, a taxpayer's taxable year ~~shall be~~ is the same as ~~his~~ the taxpayer's taxable year for federal income tax purposes.

Sec. 33. 36 MRSA §5256, sub-§2, as amended by PL 1989, c. 596, Pt. J, §6, is further amended to read:

2. Change of taxable year. If a taxpayer's taxable year is changed for federal income tax purposes, the taxable year for purposes of the tax imposed by this Part ~~shall~~ must be similarly changed. The income tax for a period of less than 12 months resulting from a change in accounting period is computed by first determining the taxable income for the period. That taxable income is then multiplied by 12 and divided by the number of months in the period of less than 12 months. A tax is computed on the resulting taxable income. The tax is then divided by 12 and multiplied by the number of months in the period of less than 12 months. The result is the tax liability before credits. ~~Itemized deductions for the period of less than 12 months shall be reduced as provided in section 5125, subsection 3, paragraph A, subparagraph (3), except that the amount established by the Code, Section 63(c) shall be divided by 12 and multiplied by the number of months in the period of less than 12 months. Standard deduction and personal exemption~~ Exemption amounts ~~shall be~~ are divided by 12 and multiplied by the number of months in the period of less than 12 months.

Sec. 34. 36 MRSA §5317, as repealed and replaced by PL 1981, c. 364, §74, is repealed.

Sec. 35. 36 MRSA §5319, sub-§2, as amended by PL 1979, c. 541, Pt. A, §247, is further amended to read:

2. Failure to furnish records or testimony. If any taxpayer willfully refuses to make available any books, papers, records or memoranda for examination by the assessor or ~~his~~ the assessor's representative or willfully refuses to attend and testify pursuant to the powers conferred on the assessor by section ~~5340, subsection 3~~ 112, the assessor may apply to a Justice of the Superior Court of Kennebec County for an order directing the taxpayer to comply with the assessor's request for books, papers, records or memoranda or for ~~his~~ the taxpayer's attendance and testimony. If the books, papers, records or memoranda required by the assessor are in the custody of a corporation, the order of the court may be directed to any principal officer of ~~such~~ the corporation. If a person fails or refuses to obey such an order, ~~he shall~~ be the person is guilty of contempt of court.

Sec. 36. 36 MRSA §5322, as amended by PL 1979, c. 378, §49, is repealed.

Sec. 37. 36 MRSA c. 839, as amended, is repealed.

Sec. 38. 36 MRSA c. 909, as amended, is repealed.

Sec. 39. 36 MRSA c. 910, as enacted by PL 1987, c. 876, §7, is repealed.

Sec. 40. 36 MRSA c. 911, as enacted by PL 1987, c. 876, §8, is repealed.

Sec. 41. 36 MRSA c. 913, as enacted by PL 1989, c. 880, Pt. A, §1, is repealed.

Sec. 42. Retroactivity. Those sections of this Act that affect the Maine Revised Statutes, Title 36, sections 1752 and 1811 are effective retroactively to January 1, 1995.

Sec. 43. Application date. Those sections of this Act that amend the Maine Revised Statutes, Title 36, sections 5102 and 5256 apply to tax years beginning on or after January 1, 1995.

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

Effective June 21, 1995.
