

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**SECOND SPECIAL SESSION**  
**September 5, 1996 to September 7, 1996**

**ONE HUNDRED AND EIGHTEENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 4, 1996 to March 27, 1997**

**FIRST SPECIAL SESSION**  
**March 27, 1997 to June 20, 1997**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 26, 1997**

**FIRST SPECIAL SESSION**  
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**SEPTEMBER 19, 1997**

**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**  
**1997**

**CHAPTER 411**

**S.P. 590 - L.D. 1760**

**An Act to Adopt the Multistate Tax Compact**

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

**Sec. 1. 5 MRSA §12004-K, sub-§11-A** is enacted to read:

<u>11-A.</u>	<u>Multistate</u>	<u>Expenses</u>	<u>36</u>
<u>State</u>	<u>Tax Compact</u>	<u>Only</u>	<u>MRSA</u>
<u>Government</u>			<u>chapter</u>
			<u>920</u>

**Sec. 2. 36 MRSA Pt. 10** is enacted to read:

**PART 10**

**INTERSTATE TAX COMPACTS**

**CHAPTER 920**

**MULTISTATE TAX COMPACT**

**§7101. Statement of purpose**

The Legislature finds that it is in the best interest of the people of the State for the State to become a full-voting member of the Multistate Tax Commission. The Multistate Tax Commission acts to protect state tax authority from unwarranted federal intervention, supports the growth of commerce by improving the administrative efficiency and marketplace equity of state business tax systems and encourages voluntary uniformity in multistate tax policies. The Legislature further finds that the Multistate Tax Commission will ensure that the State's tax system works fairly and effectively in a complex national and global economy.

**§7102. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Capital stock tax.** "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.

**2. Commission.** "Commission" means the Multistate Tax Commission.

**3. Compact.** "Compact" means the Multistate Tax Compact.

**4. Gross receipts tax.** "Gross receipts tax" means a tax, other than a sales tax, that is imposed on

or measured by the gross volume of business in terms of gross receipts or in other terms and in the determination of which no deduction is allowed that constitutes the tax an income tax.

**5. Income tax.** "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.

**6. Sales tax.** "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and required by state or local law to be stated separately from the sales price by the seller or customarily stated separately from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

**7. State.** "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or possession of the United States.

**8. Subdivision.** "Subdivision" means any governmental unit or special district of a state.

**9. Tax.** "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax and any other tax that has a multistate impact, except that the provisions of section 7107 apply only to the taxes specifically designated in section 7107.

**10. Taxpayer.** "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one state.

**11. Use tax.** "Use tax" means a nonrecurring tax, other than a sales tax, that is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention or other use of tangible personal property and is complementary to a sales tax.

**§7103. Representation on commission**

The assessor represents the State on the commission, except that the assessor may designate an alternate representative. An alternate must be either the assessor's designee or a division director in the Bureau of Taxation.

**§7104. Multistate Tax Compact Advisory Committee**

The Multistate Tax Compact Advisory Committee is established and referred to in this chapter as the "committee." The committee is composed of the State Tax Assessor, an alternate designated by the assessor, the Attorney General or the Attorney General's designee, 2 members of the Senate appointed by the President of the Senate and 2 members of the House of Representatives appointed by the Speaker of the House. The assessor serves as the chair. The committee shall meet at the call of the chair or at the request of a majority of the members and must meet at least 3 times each year. The committee may consider matters relating to recommendations of the commission and the activities of the members in representing the State.

**§7105. Multistate Tax Compact**

The Multistate Tax Compact, as established in Title 5, section 12004-K, subsection 11-A and in this chapter, may enter into any agreements with other entities.

**§7106. Purposes**

The purposes of this compact are to: facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes; promote uniformity or compatibility in significant components of tax systems; facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration; and avoid duplicative taxation.

**§7106-A. Income tax apportionment rules**

The net income of a taxpayer derived from a trade or business carried on partly within and partly outside this State must be apportioned to this State as provided in chapter 821.

**§7107. Elements of sales and use tax laws**

**1. Tax credits.** Each purchaser liable for a use tax on tangible personal property is entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid with respect to the same property to another state and any subdivision. The credit must be applied first against the amount of any use tax due the State and any unused portion of the credit must be applied against the amount of any use tax due a subdivision.

**2. Exemptions.** When a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or

subdivision taxing authority, the vendor is relieved of liability for a sales or use tax for that transaction.

**§7108. Commission; organization and management**

The Multistate Tax Commission is established. It is composed of one member from each party state who is the head of the state agency charged with the administration of the types of taxes to which the compact applies. If there is more than one agency, the State shall provide by law for the selection of the commission member from the directors of the relevant agencies. A member of the commission may be represented by an alternate only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or a designee or other counsel if the laws of the party state specifically provide is entitled to attend the meetings of the commission but may not vote. Attorneys general, their designees or other counsel may receive all notices of meetings of the commission. The commission is subject to the following.

**1. Selection of representatives.** Each party state shall provide by law for the selection of representatives from its subdivisions affected by the compact to consult with the commission member from that state.

**2. Voting.** Each member is entitled to one vote. The commission may not act unless a majority of the members are present and an action is not binding unless approved by a majority of the members.

**3. Official seal.** The commission shall adopt an official seal for use by the commission as it may provide.

**4. Annual meeting.** The commission shall hold an annual meeting and any other meetings provided by its bylaws and any special meetings its executive committee determines necessary. The commission bylaws must specify the dates of the annual and other meetings and provide notice of annual, regular and special meetings. Notice of a special meeting must include the reason for the meeting and an agenda of the items to be considered.

**5. Election of officers.** The commission shall elect annually from among its members a chair, a vice-chair and a treasurer. The commission shall appoint an executive director who serves at its pleasure and the commission shall fix the duties and compensation of the executive director. The executive director also serves as secretary of the commission. The commission shall make provisions for the bonding of its officers and employees it considers appropriate.

**6. Personnel.** Irrespective of the civil service, personnel or other merit system laws of any party state, the executive director shall appoint or discharge personnel necessary to carry out the functions of the commission and fix the duties and compensation of the personnel. The commission bylaws must provide personnel policies and programs. The commission may borrow, accept or contract for the services of personnel from any state, the United States or any other governmental entity.

**7. Accept donations and grants.** The commission may accept donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity for its use or disposal.

**8. Establish offices.** The commission may establish one or more offices for the transacting of its business.

**9. Adopt bylaws.** The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form and file a copy of the bylaws and any amendments with the appropriate agency or officer in each of the party states.

**10. Report.** The commission shall make to the governor and legislature of each party state an annual report of its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed must be reported in the annual report of the commission and include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports it considers desirable.

#### **§7109. Committees**

To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of 7 members, including the chair, vice-chair, treasurer and 4 other members elected annually by the commission. The executive committee, subject to the provisions of the compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission. The commission may establish advisory and technical committees, which may include private persons and public officials, to carry out its activities. The committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes. The commission may establish additional committees as its bylaws provide.

#### **§7110. Powers**

In addition to powers conferred in the compact, the commission has the power to:

**1. Study other systems.** Study state and local tax systems and particular types of state and local taxes;

**2. Develop and recommend proposals.** Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws by encouraging the simplification and improvement of state and local tax laws and administration;

**3. Publish information.** Compile and publish information that would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws; and

**4. Administration.** Do all things necessary and incidental to the administration of its functions pursuant to the compact.

#### **§7111. Finance**

The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for a period required by the laws of that state for presentation to the party state's legislature. Any budget submission is subject to the following.

**1. Specific recommendations.** Each of the commission's budgets of estimated expenditures must contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations required under each budget must be apportioned among the party states by apportioning 1/10th in equal shares and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes and sales and use taxes. In determining the amounts, the commission shall employ available public sources of information that present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations must indicate the sources used in obtaining information employed in applying the formula contained in this subsection.

**2. May not pledge credit of state.** The commission may not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under section 7108, subsection 7, provided that the commission takes specific action setting aside funds before incurring any obligation to be met in whole or in part in such a manner. Except when the commission makes use of funds available to it under section 7108, subsection 7, the commission may not incur any

obligation before the allotment of adequate funds by the party states.

**3. Keep accurate records.** The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission must be audited yearly by a certified or licensed public accountant and the report of the audit must be included in and become part of the annual report of the commission.

**4. Accounts open for inspection.** The accounts of the commission must be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

**5. Audit by contributors.** This section may not be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any governmental entity contributing to the support of the commission.

#### **§7112. Uniform rules and forms**

When 2 or more party states or subdivisions of party states have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax or sales or use tax, the commission may adopt uniform rules for any phase of the administration of that law, including assertion of jurisdiction to tax or prescribing uniform tax forms. The commission may also act with respect to the provisions of section 7106-A. Before the adoption of any rule, the commission shall:

**1. Public hearing required.** As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions and to all taxpayers and other persons who have made a timely request of the commission for advance notice of its rule-making proceedings; and

**2. Submission of data and views.** Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which the commission shall consider fully.

Rules adopted by the commission must be submitted to the appropriate officials of all party states and subdivisions to which the rules apply. Each state and subdivision shall consider any rule for adoption in accordance with its own laws and procedures.

#### **§7113. Interstate audits**

Any party state or subdivision desiring to make or participate in an audit of any accounts, books,

papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission has access to and may examine, at any reasonable time, accounts, books, papers, records and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall charge, to be paid by the state or local government or governmental entity for which it performs the service, for any audits performed by it in order to be reimbursed for the actual costs incurred in making the audit. Any audit is governed by the following.

**1. Attendance required.** The commission may require the attendance of a person within the state in which it is conducting an audit or part of an audit at a time and place fixed by it within the state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the state, the person may be required to attend that audit at any time and place fixed by the commission within the state of which that person is a resident.

**2. Court may order compulsory process.** The commission may apply to any court having the power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this section and any such court has jurisdiction to issue the orders. Failure of a person to obey any such order is punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, the application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated.

**3. Decline of audit.** The commission may decline to perform an audit if it finds that its available personnel or other resources are insufficient for that purpose or that, in the terms requested, the audit is impracticable. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, is of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, contingent upon sufficient participation as determined by the commission.

**4. Information confidential.** Information obtained by any audit pursuant to this section is confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information must be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit and only

through the appropriate agencies or officers of those states or subdivisions. This section may not be construed to require any taxpayer to keep records for any period not otherwise required by law.

**5. Other arrangements.** Other arrangements made or authorized pursuant to law for a cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this section.

**6. Charges against taxpayers prohibited.** The commission may not make any charge against a taxpayer for an audit.

**7. Tax defined.** As used in this section, "tax," in addition to the meaning defined in section 7102, subsection 9, means any tax or license fee imposed in whole or in part for revenue purposes.

### **§7114. Arbitration**

When the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a rule regarding arbitration, notwithstanding the provisions of section 7112.

**1. Arbitration panel.** The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who are knowledgeable and experienced in matters of tax laws and administration.

**2. Taxpayer to secure arbitration.** When the laws of the party states or any subdivision of the party states are substantially identical to the provisions of chapter 821, the taxpayer, by written notice to the commission and to each party state or subdivision of the party state that would be affected, may secure arbitration of an apportionment or allocation if that taxpayer is dissatisfied with the final administrative determination of the tax agency of the state or subdivision of that state on the grounds that it would subject that taxpayer to double or multiple taxation by 2 or more party states or subdivisions of those states. Each party state and subdivision of that state consents to the arbitration provided in this section and agrees to be bound.

**3. Arbitration board; composition.** The arbitration board is composed of one person selected by the taxpayer, one person by the agency or agencies involved and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, that person is selected by lot from the total membership of the arbitration panel. The 2 persons selected for the board in the manner provided by the provisions of this subsection shall jointly select the 3rd member of the board. If they are unable to agree on the selection, the 3rd member is selected by lot from among the total

membership of the arbitration panel. A member of a board selected by lot is not qualified to serve if that member is an officer or employee of or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding does not constitute affiliation within the meaning of this subsection.

**4. Board to choose location for hearing.** The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state in which the taxpayer does business or in any place that it finds most appropriate for gaining access to relevant evidence.

**5. Due notice.** The board shall give due notice of the times and places of its hearings. The parties are entitled to be heard, to present evidence and to examine and cross-examine witnesses. The board shall act by majority vote.

**6. Board powers.** The board may administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records and other documents and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena and the court may punish failure to obey the order as a contempt.

**7. Expenses allocated among parties.** Unless the parties otherwise agree, the expenses and other costs of the arbitration are assessed and allocated among the parties by the board in a manner it determines. The commission shall fix a schedule of compensation for arbitration board members and of other allowable expenses and costs. An officer or employee of a state or local government who serves as a member of a board is not entitled to compensation unless that officer or employee is required on account of service to forego the regular compensation resulting from the officer's or employee's public employment but is entitled to expenses.

**8. Board to determine apportionment or allocation.** The board shall determine the disputed apportionment or allocation and any matters necessary to that apportionment or allocation. The determinations of the board are final for purposes of making the apportionment or allocation, but for no other purpose.

**9. Filing requirements.** The board shall file with the commission and with each tax agency represented in the proceeding the determination of the board, the board's written statement of its reasons for

the determination, the record of the board's proceedings and any other document required by the arbitration rules of the commission to be filed.

**10. Board to publish determinations.** The commission shall publish the determinations of boards, together with the statements of the reasons.

**11. Adopt rules.** The commission shall adopt and publish rules and file a copy of those rules and any amendment to the rules with the appropriate agency or officer in each of the party states.

**12. Written compromise allowed.** This section does not prevent, at any time, a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

#### **§7115. Entry into force and withdrawal**

This compact takes effect when substantively identical provisions are enacted into law by any 7 states. This compact becomes effective as to any other state in accordance with the state's enactment of this compact. The commission shall arrange for notification of all party states when there is a new enactment of the compact. The following provisions also apply.

**1. Withdrawal from compact.** Any party state may withdraw from this compact by enacting a statute repealing the compact for that state. A withdrawal does not affect any liability already incurred by or chargeable to a party state before that withdrawal.

**2. Proceedings before arbitration board.** A proceeding commenced before an arbitration board before the withdrawal of a state and to which the withdrawing state or any subdivision of that state is a party may not be discontinued or terminated by the withdrawal and the board does not lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination.

#### **§7116. Effect on other laws and jurisdiction**

This compact may not be construed to:

**1. Fix rates of taxation.** Affect the power of any state or subdivision of that state to fix rates of taxation;

**2. Tax or fixed fees.** Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than sales tax, provided that the definition of "tax" in section 7113, subsection 7 applies for the purposes of that section and that the commission's powers of study and recommendation pursuant to section 7110 apply;

**3. Limit state or local courts.** Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any

person, corporation or other entity or subject matter, except to the extent that that jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body; and

**4. Supersede United States courts.** Supersede or limit the jurisdiction of any court of the United States.

#### **§7117. Construction**

This compact may be liberally construed to effectuate the purposes of the compact. The provisions of this compact are severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or if its applicability to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and its applicability to any government, agency, person or circumstance is not affected. If this compact is held contrary to the constitution of any state participating in the compact, the compact remains in effect for the remaining party states and the state affected as to all severable matters.

See title page for effective date.

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## CHAPTER 412

### H.P. 1001 - L.D. 1393

#### **An Act Amending the Compensation for Members of the Panel of Mediators**

**Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

**Sec. 1. 26 MRSA §892**, as amended by PL 1991, c. 798, §2, is further amended to read:

#### **§892. Panel**

The Panel of Mediators, as established by Title 5, section 12004-B, subsection 3, consisting of not less than 5 nor more than 10 impartial members, must be appointed by the Governor from time to time upon the expiration of the terms of the several members, for terms of 3 years. The Maine Labor Relations Board