

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
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

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

J.S. McCarthy Company
Augusta, Maine
1997

Sec. 15. Applicability of Site Law to existing oil terminal facilities. An oil terminal facility that is in existence on June 30, 1997 does not require review under the site location of development laws on or after that date unless it is or becomes a structure as defined in the Maine Revised Statutes, Title 38, section 482, subsection 6.

Sec. 16. Report concerning reducing nonpoint source pollution from developed areas in the shoreland zone, and addressing equity concerns relating to expansions. By January 1, 1998, the Department of Environmental Protection shall prepare and submit a report to the Joint Standing Committee on Natural Resources on the following issues:

1. Whether approval of an expansion of a non-conforming structure in the shoreland zone should be made contingent upon a reduction in the total nonpoint source pollution from the lot, including necessary installation and maintenance of best management practices; and

2. Whether the 30% expansion rule set out in the Maine Revised Statutes, Title 38, section 439-A, subsection 4 and department rules adopted pursuant to that subsection should be amended to improve the equity of its application, considering factors such as existing building size, building setback, lot area, lot frontage, degree of expansion allowed, water quality impacts and aesthetic impacts.

The report must include any draft legislation necessary to achieve any recommended changes and must briefly describe any necessary regulatory changes. In preparing the report, the department shall convene and consult with a work group that includes representatives of groups, including, but not limited to, municipalities, shorefront property owners, water utilities and environmental organizations.

Sec. 17. Use of compensation fees. Rules adopted by the Department of Environmental Protection pursuant to section 4 of this Act must provide guidance on the use of compensation fees to organizations authorized by the department to receive those fees. In developing the rules, the department shall consider appropriate percentages that should be allocated to project implementation, education, technical assistance and other project components.

Sec. 18. Retroactivity. That section of this Act that repeals and replaces the Maine Revised Statutes, Title 38, section 488, subsection 11 applies retroactively to April 10, 1996, and that section of this Act that repeals Title 38, section 488, subsection 16 applies retroactively to July 4, 1996.

See title page for effective date.

CHAPTER 503

S.P. 47 - L.D. 157

An Act to Impose a Surcharge on Documents Recorded in a Registry of Deeds to Fund Preservation of Registry Documents

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

Sec. 1. 33 MRSA §752 is enacted to read:

§752. Records preservation surcharge

1. Surcharge. In addition to any other fees required by law, a register of deeds may collect a surcharge of \$3 per document for all records that are recorded in the registry of deeds, except those recorded by agencies of State Government and municipalities.

2. Account. The surcharge imposed in subsection 1 must be transferred to the county treasurer who shall deposit it in a separate nonlapsing account within 30 days of receipt. Money in the account is not available for use as a general revenue of the county. Interest earned on the account must be credited to the account.

3. Expenditures from account. The money in the account established in subsection 2 must be used for the restoration, re-creation and preservation of the records in the office of the register of deeds.

4. Repeal. This section is repealed January 1, 2002.

See title page for effective date.

CHAPTER 504

H.P. 601 - L.D. 792

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. 5 MRSA §13080-Q, sub-§2, ¶C, as enacted by PL 1995, c. 644, §2, is amended to read:

C. State income withholding taxes derived from employment at a business within the base area are not eligible for use in the calculation of a payment to the fund if the business is eligible during the current year to receive a payment under any other program authorized by Title 36, Part 89 that is based on the amount of employer withholding taxes and the business has made or makes an election to receive that payment.

Sec. 2. 36 MRSA §142, as enacted by PL 1985, c. 691, §2, is amended to read:

§142. Cancellation and abatement

The State Tax Assessor may, within 3 years from the date of assessment, or whenever a written request has been submitted by a taxpayer within 3 years of the date of assessment, cancel any tax ~~which~~ that has been levied illegally. In addition, if justice requires, the State Tax Assessor may, with the approval of the Governor, abate within 3 years from the date of assessment, all or any part of any tax assessed by the State Tax Assessor.

Sec. 3. 36 MRSA §184-A is enacted to read:

§184-A. Intentional evasion of tax

1. Tax amount under \$2,000. Any person who intentionally attempts in any manner to evade or defeat any tax in an amount of \$2,000 or less imposed by this Title or the payment of the assessed tax, in addition to any other penalties provided by law, is guilty of a Class D crime, except that violation of this subsection is a Class C crime if the person has a prior conviction for violation of this section, section 184 or 5332.

2. Tax amount over \$2,000. Any person who intentionally attempts in any manner to evade or defeat any tax in an amount over \$2,000 imposed by this Title or the payment of the assessed tax, in addition to any other penalties provided by law, is guilty of a Class C crime, except that violation of this subsection is a Class B crime if the person has a prior conviction for violation of this section, section 184 or 5332.

3. Date of prior conviction. For purposes of this section, the date of prior conviction under this section must precede the commission of the offense being enhanced by 10 years or less. The date of conviction is deemed the date sentence is imposed.

Sec. 4. 36 MRSA §191, sub-§2, ¶G, as amended by PL 1991, c. 837, Pt. B, §18, is further amended to read:

G. The disclosure to the Attorney General of information related to any person under criminal investigation, and the subsequent sharing of or release of such information by the Attorney General to district attorneys, assistant district attorneys or state, county or local law enforcement agencies that are participating in the criminal investigation or prosecution of such a person. Requests from the Attorney General for information related to any person under criminal investigation must be submitted to the State Tax Assessor in writing and include:

- (1) The name and address of the taxpayer with respect to whom the requested return information relates;
- (2) The taxable period or periods to which the return information relates;
- (3) The statutory authority under which the proceeding or investigation is being conducted; and
- (4) The specific reason or reasons why the disclosure is, or may be, relevant to a proceeding or investigation.

The Attorney General, or any district attorney, assistant district attorney or other law enforcement agency with which the Attorney General has shared, or to which the Attorney General has released such tax information pursuant to a criminal investigation or prosecution shall retain physical control of the information until the conclusion of the investigation or proceeding for which the information was requested, after which the information must be returned immediately to the State Tax Assessor.

Sec. 5. 36 MRSA §193, as enacted by PL 1995, c. 639, §7, is amended to read:

§193. Returns; declaration covering perjury; submission of returns and funds by electronic means

Any return, report or other document required to be made pursuant to this Title must contain a declaration, in a form prescribed by the State Tax Assessor, that the statements contained in the return, report or

other document are true and made under the penalties of perjury. The assessor may allow the filing of a return or document by electronic data submission or by telephone. The assessor may also allow the payment of a tax or the refund of a tax by the electronic transfer of funds. In the case of a taxpayer that has \$200,000 or more in annual withholding tax payments to the Bureau of Taxation or \$400,000 or more in annual payments of any other single tax type, and in the case of payroll processing companies, the assessor may require payment or refund of a tax by electronic funds transfer. An electronic funds transfer allowed or required by the assessor pursuant to this section is considered a return. The assessor may adopt rules to establish procedures necessary to implement the provisions of this section and shall adopt rules in the event that payment of taxes by electronic funds transfer is mandated. Any rule adopted pursuant to this section is considered a major substantive rule for the purposes of Title 5, chapter 375, subchapter II-A.

Sec. 6. 36 MRSA §576, as amended by PL 1985, c. 99, is further amended to read:

§576. Powers and duties

The State Tax Assessor shall determine the average annual net wood production rate for each forest type described in section 573, subsections 5 to 7, in each county or region to be used in determining valuations applicable to forest land under this subchapter, on the basis of the surveys of average annual growth rates applicable in the State made from time to time by the United States Forest Service or by the Maine Forestry Bureau. The growth rate surveys shall must be reduced by a the percentage discount factor determined by the State Tax Assessor pursuant to prescribed by section 576-B to reflect the growth which that can be extracted on a sustained basis. The rates ~~shall be determined after passage of this subchapter, and~~ when determined shall remain in effect without change for each county through the property tax year ending March 31, 1975. In 1974 and in every 10th year thereafter, the State Tax Assessor shall review and set ~~such~~ rates for the following 10-year period in the same manner.

The State Tax Assessor shall determine the average stumpage value for each forest type described in section 573, subsections 5 to 7, applicable in each county, or in ~~such~~ alternative forest economic regions as ~~he may designate the assessor designates~~, after passage of this subchapter and in each year thereafter, taking into consideration the prices upon sales of sound standing timber of that forest type in that area during the previous calendar year, and ~~such any~~ other appropriate considerations ~~as he deems appropriate~~.

The proportions of the various species making up the type are to be used in the computations of the

average annual net wood production rates and average stumpage values for each forest type and the proportions of the various products are to be used in the computations of average stumpage values.

After the State Tax Assessor has made the foregoing determinations, ~~he the~~ assessor shall apply a the capitalization rate ~~as determined by him pursuant to prescribed by~~ section 576-B; to the value of the annual net wood production to determine the 100% valuation per acre for each forest type for each area and shall state the wood production rates and values used to compute ~~same~~ those rates and values.

~~The State Tax Assessor shall hold one or more public hearings, upon the foregoing matters to be determined, shall provide for a transcript thereof, and shall issue a rule or rules stating those determinations on or before April 15, 1985, and on or before October 1st each year thereafter.~~

The State Tax Assessor shall certify and transmit ~~such~~ rules to the municipal assessors of each municipality with respect to forest land therein on or before April 1st of each year.

Sec. 7. 36 MRSA §576-B, as amended by PL 1985, c. 779, §80, is repealed and the following enacted in its place:

§576-B. Discount factor and capitalization rate

The percentage factor by which the growth rates set by the State Tax Assessor pursuant to section 576 must be reduced to reflect the growth that can be extracted on a sustained basis is 10%. The capitalization rate applied to the value of the annual net wood production pursuant to section 576 is 8.5%.

Sec. 8. 36 MRSA §1754-B, sub-§1, ¶G, as enacted by PL 1995, c. 640, §3, is amended to read:

G. Every seller of tangible personal property or taxable services that has a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution. The following activities do not constitute a substantial physical presence for the purpose of this paragraph:

- (1) Solicitation of business in this State through catalogs, flyers, telephone or electronic media when delivery of ordered goods is ~~affected~~ effected by the United States mail or by an interstate 3rd-party common carrier;
- (2) Attending trade shows, seminars or conventions in this State;

(3) Holding a meeting of a corporate board of directors or shareholders or holding a company retreat or recreational event in this State;

(4) Maintaining a bank account or banking relationship in this State; or

(5) Using a vendor in this State for printing, drop shipping or telemarketing services.

Sec. 9. 36 MRSA §4641-B, 5th ¶, as amended by PL 1983, c. 859, Pt. M, §10, is further amended to read:

Each register of deeds shall, on or before the 10th day of each month, pay over to the State Tax Assessor 90% of the tax collected during the previous month. The remaining 10% ~~shall~~ **must** be retained for the county by the register of deeds and accounted for to the county treasurer as reimbursement for services rendered by the county in collecting the tax. If the tax collected is not paid over by the 10th day of the month, the State Tax Assessor may impose interest pursuant to section 186.

Sec. 10. 36 MRSA §4641-C, sub-§1, as amended by PL 1995, c. 479, §1 and affected by §2, is further amended to read:

1. Governmental entities. Deeds to property transferred to or by the United States, the State of Maine or any of their instrumentalities, agencies or subdivisions. For the purposes of this subsection, only the United States, the State of Maine and their instrumentalities, agencies and subdivisions are exempt from the tax imposed by section 4641-A; except that real property transferred to the Department of Transportation or the Maine Turnpike Authority for transportation purposes and gifts of land and interests in land real property to governmental entities; and deeds transferring real property to governmental entities from a bona fide nonprofit land conservation organization are exempt from the tax;

Sec. 11. 36 MRSA §4641-C, sub-§3, as amended by PL 1993, c. 398, §4, is further amended to read:

3. Deeds affecting a previous deed. Deeds that, without additional consideration and without changing ownership or ownership interest, confirm, correct, modify or supplement a deed previously recorded;

Sec. 12. 36 MRSA §4641-C, sub-§4, as amended by PL 1993, c. 373, §5 and c. 398, §4, is further amended to read:

4. Deeds between certain family members. Deeds between husband and wife, or parent and child, without actual consideration for the deed, and deeds between spouses in divorce proceedings;

Sec. 13. 36 MRSA §4641-D, sub-§1, as enacted by PL 1977, c. 318, §2, is amended to read:

1. Governmental conveyances. Any conveyance by or to the United States of America, the State of Maine or any of their instrumentalities, agencies or subdivisions. For purposes of this subsection, only governmental entities are exempt from the requirement to file a declaration;

Sec. 14. 36 MRSA §5215, sub-§1, as amended by PL 1993, c. 672, §1 and affected by §2, is further amended to read:

1. Credit allowed. A taxpayer, other than a public utility as defined by Title 35-A, section 102, is allowed a credit to be computed as provided in this section against the tax imposed by this Part, subject to the limitations contained in subsection 3. The amount of the credit equals the qualified federal credit, as defined in subsection 2, for taxable years beginning on or after January 1, 1979, except that a credit may be taken with respect to used property, and may not be allowed with respect to an excluded investment.

Sec. 15. 36 MRSA §5215, sub-§2, ¶A, as amended by PL 1993, c. 672, §1 and affected by §2, is further amended to read:

A. "Qualified federal credit" means, with respect to any taxable year, that portion of the credit allowed by the Internal Revenue Code of 1954, Section 38(b)(1), as of December 31, 1985, that is directly and solely attributable to qualified investment with a situs location in this State.

Sec. 16. 36 MRSA §5215, sub-§2, ¶E is enacted to read:

E. "Used property" means property that is originally placed in service by the taxpayer outside of this State. The cost of property used by the taxpayer outside of this State and then placed into service in this State on or after January 1, 1997 is the original cost of the property to the taxpayer, minus the straight-line depreciation allowable for the tax years or portions of the tax years during which the taxpayer used the property outside of this State. The cost of property used by the taxpayer outside of this State and then placed into service in this State before to January 1, 1997 is the original cost of the property.

Sec. 17. 36 MRSA §5219-D, sub-§4, as amended by PL 1995, c. 656, Pt. A, §17, is further amended to read:

4. Limitation; carry-over. The amount of the credit that may be used by a taxpayer for a taxable year may not exceed 50% of the amount of tax otherwise due under this Part for that year. A credit may not be used to reduce taxes in any tax year starting before January 1, 1993. Any unused credit may be carried over to the following year or years but must be used by ~~the tax year ending not later than June 30, 1998~~ December 31, 2004.

Sec. 18. 36 MRSA §5219-K, sub-§§3 and 4, as enacted by PL 1995, c. 368, Pt. GGG, §7, are amended to read:

3. Limitation on credit allowed. The credit allowed under this section is limited to 100% of a corporation's first \$25,000 of tax due, as determined before the allowance of any credits, plus 75% of the corporation's tax due, as determined in excess of \$25,000. The State Tax Assessor shall adopt rules similar to those authorized under Section 38(c)(2) (3)(B) of the Code for purposes of apportioning the \$25,000 among members of a controlled group.

4. Corporations filing combined return. In the case of corporations filing a combined return, a credit generated by an individual member corporation under the provisions of this section must first be applied against the tax due attributable to that company under this ~~chapter~~ Part. A member corporation with an excess research and development credit may apply its excess credit against the tax due of another group member to the extent that that other member corporation can use additional credits under the limitations of subsection 3. Unused, unexpired credits generated by a member corporation may be carried over from year to year by the individual corporation that generated the credit, subject to the limitation in subsection 5.

Sec. 19. 36 MRSA §5330, as amended by PL 1989, c. 880, Pt. D, §2, is repealed.

Sec. 20. 36 MRSA §6201, sub-§10, as corrected by RR 1993, c. 1, §109, 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 members of the claimant's household, "property taxes accrued" is that part of property taxes levied on the homestead that reflects the ownership percentage of the claimant and the claimant's household. If a claimant and spouse own their homestead for part of the ~~preceding tax year~~ for which relief is requested 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~~ the property was owned and occupied by the household as its homestead during the ~~preceding tax year~~ for which relief is requested. When a household owns and occupies 2 or more different homesteads in this State in the same tax year, property taxes accrued 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 are that percentage of the total property taxes accrued 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.

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

Effective June 12, 1997.

CHAPTER 505

S.P. 418 - L.D. 1339

An Act Relating to Municipal Excise Tax Reimbursement

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

Whereas, it is necessary for proper accounting procedures to establish the Municipal Excise Tax Reimbursement Fund immediately; 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. 29-A MRSA §533, as enacted by PL 1995, c. 440, §2 and affected by §5, is repealed.

Sec. 2. 29-A MRSA §533-A is enacted to read:

§533-A. Municipal Excise Tax Reimbursement Fund