

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 18, 1999

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
1999

provide coverage and payment under those contracts to a registered nurse first assistant who performs services that are within the scope of a registered nurse first assistant's qualifications. The provisions of this subsection apply only if reimbursement for an assisting physician would be covered and a registered nurse first assistant who performed those services is used as a substitute.

4. Limits; coinsurance; deductibles. Any contract that provides coverage for the services required by this section may contain provisions for maximum benefits and coinsurance and reasonable limitations, deductibles and exclusions to the extent that these provisions are not inconsistent with the requirements of this section.

Sec. 5. Application. The requirements of this Act apply to all policies, contracts and certificates executed, delivered, issued for delivery, continued or renewed in this State on or after January 1, 2000. For purposes of this Act, all contracts are deemed to be renewed no later than the next yearly anniversary of the contract date.

See title page for effective date.

CHAPTER 413

H.P. 274 - L.D. 382

An Act to Require a Person Who is Suspected of Being the Underlying Cause of a Liquor Violation to Provide Identification to a Law Enforcement Officer

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

Sec. 1. 15 MRSA §3103, sub-§1, ¶C, as amended by PL 1987, c. 45, Pt. B, §3, is further amended to read:

C. Offenses involving intoxicating liquor, as provided in Title 28-A, section 2051 and offenses involving refusal to provide proper identification as provided in Title 28-A, section 2087;

Sec. 2. 28-A MRSA §2087 is enacted to read:

§2087. Refusal to provide proper identification

1. Refusal to provide proper identification prohibited. A person may not intentionally refuse to provide a law enforcement officer proper identification if:

A. The person is present on licensed premises at a time when minors are not permitted to be on the premises;

B. The officer has a reasonable and articulable suspicion that a violation of law has taken place or is taking place because a minor is present on licensed premises;

C. The officer has a reasonable and articulable suspicion that the person is a minor; and

D. The officer has informed the person that the officer is investigating a possible liquor violation involving the presence of minors on the licensed premises and that the officer believes that the person is a minor.

For purposes of this section, "proper identification" means a person's correct name, address and date of birth except that, if a person has in the person's possession an identification card issued under Title 29-A, section 1410, or a motor vehicle operator's license bearing the photograph of the operator and issued under Title 29-A, chapter 11, proper identification means that identification card or motor vehicle operator's license.

2. Penalties. A violation of this section is a civil violation for which a forfeiture of not more than \$500 may be adjudged.

See title page for effective date.

CHAPTER 414

S.P. 440 - L.D. 1277

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, a 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. 29-A MRSA §525, sub-§2, as amended by PL 1995, c. 482, Pt. B, §§10 and 11 and affected by §22, is further amended to read:

2. Exceptions. A person operating a vehicle on a public way, subject to Title 36, chapter 457, ~~or 459 or 463-A~~, must shall obtain a fuel use identification decal for that vehicle, except for:

- A. A vehicle owned and operated by government agencies;
- B. A vehicle legally operating with dealer registration plates;
- C. A recreational vehicle;
- D. An authorized emergency vehicle registered in another jurisdiction and operating in response to a declared emergency; or
- E. A vehicle legally licensed for fuel use reporting under the International Fuel Tax Agreement.

Sec. 2. 29-A MRSA §525, sub-§10, as amended by PL 1997, c. 776, §21, is further amended to read:

10. Suspension. On certification by the State Tax Assessor to the Secretary of State that a person is in violation of Title 36, chapter 457, ~~or 459 or 463-A~~, the Secretary of State shall suspend all fuel use identification decals issued to that person. The Secretary of State shall promptly notify the Department of Public Safety of a suspension, revocation or reinstatement.

Until the State Tax Assessor certifies to the Secretary of State that a person is in compliance, a person who has had decals revoked may not operate a vehicle requiring a decal. To have the right to operate reinstated, a person must pay a fee of \$30 to the Secretary of State.

Sec. 3. 29-A MRSA §2458, sub-§2, as amended by PL 1997, c. 776, §§47 to 49, is further amended by amending the last paragraph to read:

The Secretary of State may suspend all the certificates of registration and all the fuel use identification decals issued by the State to any motor carrier without preliminary hearing upon showing by records or other sufficient evidence that the person responsible for complying with the payment of reporting provisions of Title 36, chapter 457, ~~or 459 or 463-A~~ has failed to comply with the provisions in these chapters.

Sec. 4. 31 MRSA §761, sub-§1, as enacted by PL 1993, c. 718, Pt. A, §1, is amended to read:

1. Classified as partnership. For purposes of taxation under Title 36, Part 8, a limited liability company formed under this chapter or qualified to do business in this State as a foreign limited liability company is classified as a partnership, unless classified otherwise for federal income tax purposes, in which case the limited liability company is classified in the same manner as it is classified for federal income tax purposes.

Sec. 5. 31 MRSA §761, sub-§3 is enacted to read:

3. Taxation. The taxation of limited liability companies is also governed by Title 36, section 5180.

Sec. 6. 36 MRSA §142, as amended by PL 1997, c. 504, §2, is further 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 that has been levied illegally. In addition, if justice requires, the ~~State Tax Assessor~~ assessor may, with the approval of the Governor, abate 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, all or any part of any tax assessed by the ~~State Tax Assessor~~ assessor.

Sec. 7. 36 MRSA §151, 3rd ¶, as repealed and replaced by PL 1993, c. 395, §2 and affected by §32, is amended to read:

The State Tax Assessor's decision on reconsideration must be mailed to the taxpayer or the taxpayer's designated representative by certified or registered mail and the decision must set forth briefly the ~~State Tax Assessor's~~ 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~~ 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. 8. 36 MRSA §177, as amended by PL 1995, c. 639, §4, is further amended to read:

§177. Trust fund status of certain collections

1. Generally. All sales and use taxes collected by a person pursuant to Part 3, all taxes collected by a person under color of Part 3 that have not been properly returned or credited to the persons from whom they were collected, all taxes collected by or imposed on a person pursuant to chapter 451 or 459, all fees collected pursuant to chapter 719 and all taxes collected by a person pursuant to chapter 827 constitute a special fund in trust for the State Tax Assessor. The liability for the taxes or fees and the interest or penalty on taxes or fees is enforceable by assessment and collection, in the manner prescribed in this Part, against the person and against any officer, director, member, agent or employee of that person who, in that capacity, is responsible for the control or management of the funds or finances of that person or is responsible for the payment of that person's taxes.

2. Responsible individual. Each person required to collect taxes ~~which that~~ are designated by subsection 1 as trust funds shall inform the State Tax Assessor, at the time an audit of that person's trust fund obligation is performed by the ~~State Tax Assessor~~ assessor, of the name and position of the individual who generally is responsible for the control or management of that person's funds or finances and, if different, the individual who is specifically responsible for the collection and paying over of those trust funds.

3. Notice to segregate. Whenever the State Tax Assessor finds that the payment of the trust funds established under subsection 1 will be jeopardized by delay, neglect or misappropriation or whenever any person fails to make payment of taxes or file reports as required by Part 3, or by chapter 451, 459 or 827, the ~~State Tax Assessor~~ assessor may direct that person to segregate the trust funds from and not to commingle them with any other funds or assets of that person. ~~Within 5 days after the mailing of notice of that segregation requirement, all All taxes which thereafter that are collected shall after receipt of the notice of the segregation requirement must be paid on account to the State Tax Assessor assessor until the taxes are due. The State Tax Assessor assessor shall establish in the segregation notice the manner in which the taxes are to be paid to him. The segregation requirement shall remain remains in effect until a notice of cancellation is given by the State Tax Assessor assessor.~~

4. Revocation for nonsegregation. Upon the expiration of the 5-day period designated in subsection 3, if any person who is a "retailer" under Part 3 or a fuel supplier, distributor or importer subject to Part 5 fails to make the required payments on account to the State Tax Assessor, the ~~State Tax Assessor~~ assessor may revoke any registration certificate ~~which that~~ has been issued to that person. The revocation ~~shall be~~ is reviewable in accordance with section 151.

5. Stay of running of period of limitation. The running of the period of limitation for assessment of trust fund taxes against a responsible officer, director, member, agent or employee of a person ~~who that~~ has collected those taxes is stayed for the period of time, plus 120 days, during which an assessment against that person is subject to administrative or judicial review ~~or remains outstanding because that person is the subject of bankruptcy proceedings under the United States Bankruptcy Code.~~

6. Sale of business; purchaser liable for tax. If a person liable for any trust fund taxes incurred in the course of operating a business sells the business or stock of goods or quits the business, the person shall make a final return and payment within 15 days after the date of selling or quitting the business. The successor, successors or assignees, ~~if any,~~ shall withhold a sufficient amount of the purchase money to cover the amount of those taxes, along with applicable interest and penalties, until such time as the former owner produces a receipt from the State Tax Assessor showing that the taxes have been paid, or a certificate from the ~~State Tax Assessor~~ assessor stating that no trust fund taxes, interest or penalties are due. A purchaser who fails to withhold purchase money is personally liable for the payment of the taxes, penalties and interest accrued and unpaid on account of the operation of the business by the former owner, owners or assignors.

Sec. 9. 36 MRSA §186, as amended by PL 1997, c. 668, §13, is further amended to read:

§186. Interest

Any person who fails to pay any tax, other than a tax imposed pursuant to chapter 105, on or before the last date prescribed for payment is liable for interest on the tax, calculated from that date and compounded monthly. The State Tax Assessor shall establish annually, by rule, the rate of interest, which may not exceed the highest conventional rate of interest charged for commercial unsecured loans by Maine banking institutions on the first business day of ~~October~~ September preceding the calendar year. For purposes of this section, the last date prescribed for payment of tax must be determined without regard to any extension of time permitted for filing a return. A tax that is upheld on administrative or judicial review bears interest from the date on which payment would have been due in the absence of review. Any tax, interest or penalty imposed by this Title that has been erroneously refunded and is recoverable by the ~~State Tax Assessor~~ assessor bears interest at the above rate from the date of payment of the refund. Interest accrues automatically, without being assessed by the ~~State Tax Assessor~~ assessor, and is recoverable by the ~~State Tax Assessor~~ assessor in the same manner as if it were a tax assessed under this Title. If the failure to

pay a tax when required is explained to the satisfaction of the ~~State Tax Assessor~~ assessor, the ~~State Tax Assessor~~ assessor may abate or waive the payment of all or any part of that interest.

Except as otherwise provided in this Title, and except for taxes imposed pursuant to chapter 105, interest, at the rate determined by the State Tax Assessor for underpayments pursuant to this section, shall must be paid on overpayments of tax from the date the return listing the overpayment was filed, or the payment was made, whichever is later.

Sec. 10. 36 MRSA §187-B, sub-§5-A, ¶B, as enacted by PL 1997, c. 668, §15, is amended to read:

B. The person makes 2 or more required electronic payments in any consecutive 6-month period that do ~~not~~ not comply with the specifications set forth in a rule issued by the assessor pursuant to section 193.

Sec. 11. 36 MRSA §191, sub-§2, ¶V, as amended by PL 1997, c. 703, §3, is further amended to read:

V. The disclosure by employees of the Bureau of Revenue Services, to designated representatives of the Department of Labor, of all information ~~contained on a joint return or report submitted to the tax assessor and~~ required by the ~~tax assessor~~ State Tax Assessor and the Commissioner of Labor for the administration of the taxes imposed by Part 8 and by Title 26, chapter 13; ~~and~~

Sec. 12. 36 MRSA §191, sub-§2, ¶W, as enacted by PL 1997, c. 703, §4, is amended to read:

W. The disclosure by the State Tax Assessor to the State Auditor when necessary to the performance of the State Auditor's official duties; ~~and~~

Sec. 13. 36 MRSA §191, sub-§2, ¶X is enacted to read:

X. The disclosure to the Department of Human Services, Bureau of Medical Services of information relating to the administration of the elderly low cost drug program.

Sec. 14. 36 MRSA §1283, 2nd ¶, as amended by PL 1981, c. 706, §15, is further amended to read:

The State Tax Assessor shall, whenever the State acquires title to ~~such~~ real estate under this subchapter, cause an inventory to be made of all ~~such~~ the real estate. ~~Such The~~ inventory ~~shall must~~ contain a description of the real estate, amount of accrued taxes by years and ~~such any~~ any other information ~~as may be~~

necessary in the administration and supervision of ~~such the~~ real estate. A copy of ~~such the~~ inventory ~~shall must~~ be furnished to the Commissioner of Conservation and the Commissioner of Inland Fisheries and Wildlife prior to the convening of the Legislature. The ~~State Tax Assessor~~ assessor shall report annually to the Legislature not later than 15 days after it convenes. ~~Such The~~ report ~~shall must~~ contain a copy of the inventory of real estate then owned by the State and such recommendations as to the disposition of this real estate as the ~~State Tax Assessor and~~ assessor, the Commissioner of Conservation and the Commissioner of Inland Fisheries and Wildlife may wish to make.

Sec. 15. 36 MRSA §1752, sub-§17-A, ¶G, as amended by PL 1993, c. 701, §4, is further amended to read:

G. Rental of video tapes and video equipment; ~~and~~

Sec. 16. 36 MRSA §1752, sub-§17-A, ¶H, as amended by PL 1995, c. 281, §14 and affected by §42, is further amended to read:

H. Rental or lease of an automobile; ~~and~~

Sec. 17. 36 MRSA §1752, sub-§17-A, ¶I is enacted to read:

I. Transmission and distribution of electricity.

Sec. 18. 36 MRSA §1752-A is enacted to read:

§1752-A. Residence

In determining eligibility for exemption under section 1760, references to residents or nonresidents refer to individuals.

Sec. 19. 36 MRSA §1760, sub-§9-B, as amended by PL 1979, c. 520, §5, is further amended to read:

9-B. Residential electricity. Sale and delivery of the first 750 kilowatt hours of residential electricity per month. For the purpose of this subsection, "residential electricity" ~~shall mean~~ means electricity furnished to homes, mobile homes, boarding homes and apartment houses, with the exception of hotels and motels. Where residential electricity is furnished through one meter to more than one residential unit and where the electric utility applies its tariff on a per unit basis, the furnishing of electricity ~~shall be deemed is considered~~ a separate sale for each unit to which the tariff applies. For purposes of this subsection, "delivery" means transmission and distribution;

Sec. 20. 36 MRSA §1760, sub-§9-D, as amended by PL 1991, c. 591, Pt. N, §1 and affected by §2, is further amended to read:

9-D. Fuel and electricity used at a manufacturing facility. Ninety-five percent of the sale price of all fuel and electricity purchased for use at a manufacturing facility. ~~The sales or use tax rate applicable to 95% of the sale price of such fuel and electricity must be progressively reduced to 0 according to the following schedule: For purposes of this subsection, "sale price" includes, in the case of electricity, any charge for transmission and distribution.~~

| Date of purchase | Sales or use tax rate |
|--------------------------------|-----------------------|
| July 1, 1987, to June 30, 1988 | 4% |
| July 1, 1988, to June 30, 1989 | 3% |
| July 1, 1989, to June 30, 1991 | 2% |
| July 1, 1991, to June 30, 1993 | 1% |
| July 1, 1993, and thereafter | 0% |

Each year prior to the effective date of the next reduction, after the reduction beginning July 1, 1987, the joint standing committee of the Legislature having jurisdiction over taxation shall review the effect of this subsection and report to the Legislature.

Sec. 21. 36 MRSA §1760, sub-§61, as enacted by PL 1987, c. 769, Pt. A, §154, is amended to read:

61. Construction contracts with exempt organizations. Sales of tangible personal property, to a construction contractor, ~~which that~~ are to be physically incorporated in, and become a permanent part of, real property for sale to any organization or government agency provided exemption under this section, except as otherwise provided. ~~In order to qualify for this exemption, the contractor must have entered into a construction contract with the exempt organization prior to the purchase of the tangible personal property.~~

Sec. 22. 36 MRSA §1760, sub-§80 is enacted to read:

80. Sales of property delivered outside this State. Sales of tangible personal property when the seller delivers the property to a location outside this State or to the United States Postal Service, a common carrier or a contract carrier hired by the seller for delivery to a location outside this State, regardless of whether the property is purchased F.O.B. shipping point or other point in this State and regardless of whether passage of title occurs in this State.

Sec. 23. 36 MRSA §1811, last ¶, as amended by PL 1995, c. 281, §19 and affected by §42, is further amended to read:

Rental or lease of an automobile for one year or more must be taxed at the time of the lease or rental transaction at ~~6%~~ 5 1/2% 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. 24. 36 MRSA §1812, sub-§1, ¶A, as repealed and replaced by PL 1991, c. 591, Pt. XX, §3 and affected by §§7 and 8, is repealed.

Sec. 25. 36 MRSA §1812, sub-§1, ¶A-1 is enacted to read:

A-1. If the tax rate is 5 1/2%:

| Amount of Sale Price | Amount of Tax |
|-----------------------------|---------------|
| \$0.01 to \$0.09, inclusive | 0¢ |
| .10 to .18, inclusive | 1¢ |
| .19 to .36, inclusive | 2¢ |
| .37 to .54, inclusive | 3¢ |
| .55 to .72, inclusive | 4¢ |
| .73 to .90, inclusive | 5¢ |
| .91 to 1.09, inclusive | 6¢ |
| 1.10 to 1.27, inclusive | 7¢ |
| 1.28 to 1.45, inclusive | 8¢ |
| 1.46 to 1.63, inclusive | 9¢ |
| 1.64 to 1.81, inclusive | 10¢ |
| 1.82 to 2.00, inclusive | 11¢ |

Sec. 26. 36 MRSA §2521-A, 3rd ¶, as amended by PL 1997, c. 435, §5, is further amended to read:

Insurance companies, captive insurance companies, associations or attorneys-in-fact of a reciprocal insurer with annual tax liability not exceeding \$500 may with approval of the State Tax Assessor file an annual return with payment on ~~the last day of January each year~~ or before March 15th covering the prior calendar year.

Sec. 27. 36 MRSA §3203, sub-§§5 and 6, as enacted by PL 1997, c. 738, §10, are amended to read:

5. Allowance for certain losses of undyed diesel fuel. An allowance of not more than 1/4 of 1% from the amount of undyed diesel fuel received by ~~the distributor a supplier~~, plus 1/4 of 1% on all transfers in vessels, tank cars or full tank truck loads by ~~a distributor the supplier~~ in the regular course of business from one of the ~~distributor's supplier's~~ places of business to another of the ~~distributor's supplier's~~ places of business within the State, may be allowed by the assessor to cover the loss through shrinkage, evaporation or handling sustained by the ~~distributor~~

supplier. The total allowance for these losses must be supported by documentation satisfactory to the assessor and may not exceed 1/2 of 1% of the receipts by the ~~distributor~~ supplier. The allowance must be calculated on an annual basis. A further deduction may not be allowed unless the assessor is satisfied upon definite proof submitted to the assessor that a further deduction should be allowed for a loss sustained through fire, accident or some unavoidable calamity.

6. Allowance for certain losses of propane.

An allowance of not more than 1% from the amount of propane received by ~~the distributor~~ a supplier, plus 1% on all transfers in vessels, tank cars or full tank truck loads by a ~~distributor~~ the supplier in the regular course of business from one of the ~~distributor's~~ supplier's places of business to another of the ~~distributor's~~ supplier's places of business within the State, may be allowed by the assessor to cover the loss through shrinkage, evaporation or handling sustained by the ~~distributor~~ supplier. The total allowance for these losses must be supported by documentation satisfactory to the assessor and may not exceed 2% of the receipts by the distributor. A further deduction may not be allowed unless the assessor is satisfied upon definite proof submitted to the assessor that a further deduction should be allowed for a loss sustained through fire, accident or some unavoidable calamity.

Sec. 28. 36 MRSA §3204-A, sub-§2, as enacted by PL 1995, c. 271, §7, is amended to read:

2. Heating and cooking. Special fuel delivered into a tank used solely for heating or cooking purposes, ~~sold for resale to a licensed or registered supplier;~~

Sec. 29. 36 MRSA §3204-A, sub-§2-A is enacted to read:

2-A. Sales for resale. Special fuel sold for resale to a licensed supplier.

Sec. 30. 36 MRSA §3205, as amended by PL 1985, c. 127, §1, is further amended to read:

§3205. Registered supplier

Every supplier of special fuel ~~solely~~ making sales only of special dyed fuel; ~~not subject to the special fuel tax in accordance to section 3203, shall file an affidavit to that effect~~ or taxable special fuel pursuant to section 3203 shall register with the State Tax Assessor on forms prescribed and supplied to him by the assessor. A copy of the ~~affidavit shall~~ registration certificate must be displayed in each place of business of that supplier.

Sec. 31. 36 MRSA §3207, last ¶, as enacted by PL 1993, c. 670, §7, is repealed.

Sec. 32. 36 MRSA §3235, as amended by PL 1985, c. 535, §6, is further amended to read:

§3235. Tax a debt; recovery; preference

The taxes, interest and penalties imposed by chapters 7, 451, 453, ~~and 459 and 463-A,~~ from the time the same ~~shall be~~ are due, ~~shall be~~ are personal debt of the supplier, distributor, importer, motor carrier or user to the State, recoverable in any court of competent jurisdiction in a civil action in the name of the State, and ~~shall~~ have preference in any distribution of the assets of the taxpayer, whether in bankruptcy, insolvency or otherwise. The proceeds of any judgment obtained ~~shall~~ must be paid to the State Tax Assessor.

Sec. 33. 36 MRSA c. 463-A, as enacted by PL 1983, c. 863, Pt. D, §3, is repealed.

Sec. 34. 36 MRSA §4063, sub-§1, as amended by PL 1991, c. 546, §27, is further amended to read:

1. Amount. A tax is imposed upon the transfer of the estate of every person who, at the time of death, was a resident of this State. The amount of this tax is equal to the amount by which the maximum credit for state death taxes determined under the Code, Section ~~2011-B~~ 2011, in this chapter sometimes referred to as the "credit," exceeds the lesser of:

A. The aggregate amount of all constitutionally valid estate, inheritance, legacy and succession taxes actually paid to the several states of the United States, other than this State, in respect of any property owned by that decedent or subject to those taxes as a part of or in connection with the decedent's estate; or

B. An amount equal to such proportion of such allowable credit as the value of properties taxable by other states bears to the value of the entire federal gross estate wherever situated.

Sec. 35. 36 MRSA §4069, as enacted by PL 1981, c. 451, §7, is amended to read:

§4069. Extension of due date for payment of tax

The State Tax Assessor may extend the time for payment of the tax or any part ~~thereof of the tax~~ for a reasonable period of time not to exceed one year from the date fixed for payment and may grant successive extensions. The aggregate of extensions with respect to any estate may not exceed 10 years, unless a longer period is called for by a payment arrangement elected pursuant to section 4069-A. If an extension is granted, ~~he~~ the assessor may require the taxpayer:

1. Bond. To give a bond to the Treasurer of State in such amount as the State Tax Assessor deems assessor determines necessary; or

2. Other security. To deposit with the Treasurer of State bonds or other negotiable obligations of governmental entities with an aggregate value sufficient to adequately secure payment of the tax.

Sec. 36. 36 MRSA §4069-A is enacted to read:

§4069-A. Extension of time for payment of estate tax when estate consists largely of interest in closely held business

1. Deferred payment arrangement. If the Internal Revenue Service has approved a federal estate tax deferral and installment payment arrangement under Section 6166 of the Code, the executor may elect a similar deferred payment arrangement under this section for payment of the tax imposed by this chapter, subject to acceptance by the State Tax Assessor.

2. Time and manner of election; rejection by State Tax Assessor. An election under this section may be made by attaching to a timely filed Maine estate tax return, in addition to a copy of the federal estate tax return as required by section 4068, copies of all documentation required by the Internal Revenue Service and submitted in support of the federal payment deferral. Documentation submitted to the assessor must clearly indicate the amount of Maine estate tax and interest to be paid in installments; the number of separate installments; and the due date of each installment payment. The assessor may reject the election if the terms of the proposed arrangement are substantially different from the terms of the federal arrangement. Any election not rejected in writing by the assessor within 60 days after the election is made is considered accepted.

3. Interest and penalties. The amount of Maine estate tax deferred under this section is subject to interest pursuant to section 186. Interest payable on the unpaid tax attributable to a 5-year deferral period pursuant to Section 6166 of the Code must be paid annually. Interest payable on any unpaid tax attributable to any period after the 5-year deferral period must be paid annually at the same time as, and as part of, each installment payment of the tax. If any payment of principal or interest under this section is not made on or before the due date, the penalties provided by section 187-B apply.

Sec. 37. 36 MRSA §4365, first ¶, as repealed and replaced by PL 1997, c. 458, §6, is amended to read:

A tax is imposed on all cigarettes imported into this State or held in this State by any person for sale at the rate of 18.5 mills for each cigarette. Payment of the tax is evidenced by the affixing of stamps to the packages containing the cigarettes. If an individual purchases unstamped packages containing cigarettes in a quantity greater than 2 cartons from a person other than a licensed distributor or dealer, the tax may be assessed directly by the State Tax Assessor within 3 years from the date of the purchase.

Sec. 38. 36 MRSA §4365-D, as amended by PL 1997, c. 643, Pt. T, §4 and affected by §6 and c. 750, Pt. D, §1, is repealed.

Sec. 39. 36 MRSA §5102, sub-§10, as amended by PL 1991, c. 546, §33, is further amended to read:

10. Taxable corporation. "Taxable corporation" means, for any taxable year, a corporation which that, at any time during that taxable year, realized Maine net income. "Taxable corporation" includes any S corporation that is required by section 5241 to file a return and that is subject to federal tax under the Code, Section 1374 and 1375.

Sec. 40. 36 MRSA §5122, sub-§2, ¶E, as repealed and replaced by PL 1989, c. 880, Pt. G, §2, is amended to read:

E. Pick-up contributions paid to the taxpayer by the Maine State Retirement System or distributed as the result of a rollover, whether or not included in federal adjusted gross income, that have been previously taxed under this Part;

Sec. 41. 36 MRSA c. 814 is enacted to read:

CHAPTER 814

LIMITED LIABILITY COMPANIES

§5180. Taxation of limited liability companies

1. Classified as partnership. For purposes of taxation pursuant to this Part, a limited liability company formed under Title 31, chapter 13 or qualified to do business in this State as a foreign limited liability company is classified as a partnership, unless classified otherwise for federal income tax purposes, in which case the limited liability company is classified in the same manner as it is classified for federal income tax purposes.

2. Taxation. The taxation of limited liability companies is also governed by Title 31, section 761.

Sec. 42. 36 MRSA §5206-D, sub-§8, ¶B, as amended by PL 1997, c. 746, §16 and affected by §24, is further amended to read:

B. A bank, savings bank, industrial bank, savings and loan association or any other entity, excluding a credit union authorized to do business in this State as defined in Title 9-B, section 131, subsection 12-A, that accepts deposits that are insured by an agency of the Federal Government;

Sec. 43. 36 MRSA §5206-D, sub-§§12 and 13, as amended by PL 1997, c. 746, §17 and affected by §24, are further amended to read:

12. Maine assets. "Maine assets" means a financial institution's total end-of-year assets required to be reported pursuant to the laws of the United States on Internal Revenue Service Form 1120, 1120S, 1065 or any other Internal Revenue Service form used to report end-of-year assets or, in the case of an entity with a single owner that may be disregarded as an entity separate from its owner pursuant to Internal Revenue Service regulations, the financial institution's total end-of-year assets determined as if the entity were required to file Internal Revenue Service Form 1065, multiplied by the fraction obtained pursuant to section 5206-E. In the case of a financial institution that is a qualified subchapter S subsidiary as defined by the Code, Section 1361, the financial institution's "Maine assets" means total end-of-year assets determined as if the entity were required to file Internal Revenue Service Form 1120S, multiplied by the fraction obtained pursuant to section 5206-E.

13. Maine net income. "Maine net income" means, for any taxable year, a financial institution's net income or loss per books required to be reported pursuant to the laws of the United States on Internal Revenue Service Form 1120, 1120S, 1065 or any other Internal Revenue Service form used to report net income or loss per books or, in the case of an entity with a single owner that may be disregarded as an entity separate from its owner pursuant to Internal Revenue Service regulations, the financial institution's net income or loss per books determined as if the entity were required to file Internal Revenue Service Form 1065, and apportioned to this State under section 5206-E. In the case of a financial institution that is a qualified subchapter S subsidiary as defined by the Code, Section 1361, the financial institution's "Maine net income" means a financial institution's net income or loss per books determined as if the entity were required to file Internal Revenue Service Form 1120S and apportioned to this State under section 5206-E.

To the extent that a financial institution derives income from a unitary business carried on by 2 or more members of an affiliated group, "Maine net income" is determined by apportioning, in accordance with section 5206-E, that part of the net income of the entire group that derives from the unitary business.

Sec. 44. 36 MRSA §5206-D, sub-§22, as enacted by PL 1997, c. 404, §5 and affected by §10, is amended to read:

22. Unitary business. "Unitary business" means a business activity that is characterized by unity of ownership, functional integration, centralization of management ~~or~~ and economies of scale.

Sec. 45. 36 MRSA §5215, sub-§3, ¶B, as amended by PL 1997, c. 761, §3, is further amended to read:

B. With payroll records and reports substantiating that at least 100 new jobs attributable to the operation of property considered to be qualified investment were created in the 24-month period following the date the property was placed in service. To assess the continuing nature of the jobs, the taxpayer must demonstrate that the new jobs credit base is at least \$700,000 for the taxable year of the qualified federal credit ~~or~~ for either of the next 2 calendar years. The \$700,000 must be adjusted proportionally for any change in Title 26, section 1043, subsection 2 wages from \$7,000. With respect to new jobs created after August 1, 1998, but before October 1, 2001, the employer must also demonstrate that the qualifying jobs are covered by a retirement program subject to the Employee Retirement Income Security Act of 1974, 29 United States Code, Sections 101 to 1461, as amended; that group health insurance is provided for employees in those positions; and that the wages for those positions, calculated on a calendar year basis, are greater than the average per capita income in the labor market area in which the employee is employed; and

Sec. 46. 36 MRSA §5215, sub-§3, ¶C, as enacted by PL 1997, c. 761, §4, is repealed.

Sec. 47. 36 MRSA §5219-M, sub-§1, ¶D is enacted to read:

D. "Primarily" means more than 50% of the time.

Sec. 48. 36 MRSA §5219-O, sub-§1, as enacted by PL 1997, c. 775, §1 and affected by §2, is amended to read:

1. Credit allowed. A taxpayer constituting an employing unit that employs fewer than 5 low-income employees 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 subsections 3 and 4. The credit equals the lesser of 20% of dependent health benefits paid under a health benefit plan during the taxable year for which the credit is allowed or \$125 per employee with dependent health

benefits coverage. A taxpayer who received a credit under this section in the preceding year and whose number of low-income employees is 5 or more may continue to receive the credit for 2 years after the last year in which the number of low-income employees was fewer than 5.

Sec. 49. 36 MRSA §5219-P, sub-§2, as reallocated by RR 1997, c. 2, §62, is amended to read:

2. Credit allowed. A taxpayer is allowed a credit against the tax imposed by this Part in an amount equal to the qualifying percentage of expenditures paid or incurred by the taxpayer for the construction or installation of or improvements to any filling or charging station in this State for the purposes of providing clean fuels to the general public for use in motor vehicles, as calculated pursuant to subsection 4.

Sec. 50. 36 MRSA §5228, sub-§3, as amended by PL 1991, c. 591, Pt. DDD, §1 and affected by §2, is further amended to read:

3. Amount of estimated tax to be paid. Every person required to make payment of estimated tax is liable for an estimated tax ~~which that~~ is no less than the smaller of the following; ~~however,~~ large corporations as defined in the ~~United States Internal Revenue Code, Section 6655(q) 6655(g)~~, are subject only to paragraph B, except as provided in subsection 5, paragraph C:

A. An amount equal to the preceding year's state income tax liability, if that preceding year was a taxable year of 12 months; or

B. An amount equal to 90% of the income tax liability for the current year determined without taking into account the current year's investment tax credit set forth in section 5219-E, except that for farmers and persons who fish commercially, this amount is 66 2/3% of the tax liability for the current year.

Sec. 51. 36 MRSA §5228, sub-§5, ¶C, as enacted by PL 1991, c. 9, Pt. DD, §3 and affected by §4, is amended to read:

C. If the taxpayer is a large corporation as defined in the ~~United States Internal Revenue Code, Section 6655(q) 6655(g)~~, then the corporation may elect to determine its first required installment for any taxable year pursuant to subsection 3, paragraph A. ~~However, if~~ If the corporation so elects, its 2nd required installment for the taxable year must equal the total amount of estimated tax for the first 2 installments for the taxable year pursuant to subsection 3, paragraph B, less the amount of the first installment

for the taxable year allowed pursuant to subsection 3, paragraph A.

Sec. 52. 36 MRSA §5228, sub-§9, as enacted by PL 1985, c. 691, §§35 and 48, is amended to read:

9. Individual underpayment of 4th installment. If, on or before January 31st of the following taxable year, an individual, not including a corporation, files a return and pays in full the individual's tax liability for the taxable year of the return, then no penalty may be imposed with respect to any underpayment of the 4th required installment for the year.

Sec. 53. 36 MRSA §5255-B, as repealed and replaced by PL 1987, c. 769, Pt. A, §161, is amended to read:

§5255-B. Certain items of income under the United States Internal Revenue Code

Any person maintaining an office or transacting business within this State and who is required to deduct and withhold a tax on items of income under the Code, other than wages subject to withholding as provided in section 5250 or sales of real estate subject to withholding as provided in section 5250-A, shall deduct and withhold from such items to the extent they constitute income ~~which that~~ is not excluded from taxation under Maine law, a tax equal to 5% ~~thereof of the income~~, unless withholding pursuant to the Code is based on other than a flat rate amount. In that event, the State's withholding procedure should estimate taxable income using the same approach to exemptions as the Code and the amount of tax to be withheld should be calculated in accordance with withholding methods prescribed pursuant to section 5250.

Sec. 54. 36 MRSA §6201, sub-§9, as amended by PL 1993, c. 395, §28, 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 the first \$5,000 in the proceeds from a life insurance policy, whether paid in a lump sum or in the form of an annuity. Income does not include a rollover from an individual retirement account, pension or annuity fund or plan to an individual retirement account, pension or annuity fund or plan even if the amount of the rollover is includable in Maine adjusted gross income. Income also does not include gifts from nongovernmental sources or surplus foods or other relief in kind supplied by a governmental agency.

Sec. 55. Application. That section of this Act that enacts the Maine Revised Statutes, Title 36, section 1760, subsection 80 applies to all taxable periods that are open for purposes of assessment or for administrative or judicial review.

Sec. 56. Retroactive application. Those sections of this Act that amend the Maine Revised Statutes, Title 36, section 5215, subsection 3, paragraph B and repeal Title 36, section 5215, subsection 3, paragraph C are retroactive to July 9, 1998.

Sec. 57. Application. That section of this Act that amends the Maine Revised Statutes, Title 36, section 5122, subsection 2, paragraph E, applies to tax years beginning on or after January 1, 1996. That section of this Act that amends Title 36, section 5206-D, subsections 12 and 13, apply to tax years beginning on or after January 1, 1997. That section of this Act that amends Title 36, section 6201, subsection 9, applies to applications filed on or after August 1, 1998.

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

Effective June 5, 1999.

CHAPTER 415

H.P. 619 - L.D. 859

An Act to Require the State Planning Office to Report to the Committee on State and Local Government and the Committee on Natural Resources

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

Sec. 1. 3 MRSA §959, sub-§1, ¶M, as amended by PL 1999, c. 127, Pt. C, §14, is further amended to read:

M. The joint standing committee of the Legislature having jurisdiction over state and local government matters shall use the following list as a guideline for scheduling reviews:

- (1) Capitol Planning Commission in 1997;
- (2) State Civil Service Appeals Board in 1999;
- (3) State Claims Commission in 1999;
- (4) Maine Municipal Bond Bank in 2001;
- (5) Office of Treasurer of State in 2001;
- (6) Department of Administrative and Financial Services, except for the Bureau of Revenue Services, in 2003;
- (7) Department of the Secretary of State, except for the Bureau of Motor Vehicles, in 2003; and
- (9) State Planning Office in ~~2005~~ 2001.

Sec. 2. 5 MRSA §3304, sub-§1, as repealed and replaced by PL 1977, c. 674, §7, is amended to read:

1. Director. The executive head of the State Planning Office ~~shall be~~ is the director and ~~shall be~~ is appointed by the Governor to serve at the pleasure of the Governor. ~~The director shall be paid a salary fixed by the Governor.~~

Sec. 3. 5 MRSA §3304, sub-§3, ¶I, as amended by PL 1989, c. 501, Pt. DD, §7, is further amended to read:

I. Make reports at least annually to the Governor and to the joint standing committee of the Legislature ~~on~~ having jurisdiction over state and local government matters detailing the activities of the office and, after consultation with and approval by the Governor, submit such recommendations for legislative action as ~~deemed~~ determined necessary to further the purposes of this chapter;

Sec. 4. 5 MRSA §3304, sub-§3, ¶I-1 is enacted to read:

I-1. Make reports annually to the joint standing committee of the Legislature having jurisdiction over natural resources matters detailing the activities of the office regarding land issues and, after consultation with and approval of the Governor, submit recommendations for legislative