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OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

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

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Augusta, Maine
2000

Sec. 7. 27 MRSA §268 is enacted to read:

§268. Duties

The duties of the State Historian are:

1. History and heritage. To enhance the knowledge of Maine citizens of the State's history and heritage;

2. Teaching of history. To encourage the teaching of Maine history in the public schools;

3. Consult. To serve as consultant to the Governor and Legislature on matters pertaining to Maine history;

4. Lecture. To lecture on topics of Maine history within the historian's area of expertise as determined appropriate by the State Historian;

5. Respond to inquiries. To respond to inquiries about the existence and location of documents, artifacts and other materials of Maine history; and

6. Report. To report to the joint standing committee of the Legislature having jurisdiction over cultural affairs during the first regular session of each legislative biennium.

Sec. 8. 27 MRSA §453, sub-§1, as amended by PL 1989, c. 912, §4, is further amended to read:

1. Amount; gifts and donations. ~~Any~~ A contracting agency, except a school administrative unit, shall expend out of ~~any~~ money appropriated or allocated by the Legislature for the construction of ~~any~~ a public building or facility, except for a correctional ~~facilties~~ facility, a minimum amount of 1% of the construction portion of the appropriation or allocation, for the purpose of acquiring, transporting and installing works of art. School units ~~which~~ that have decided to participate in the Percent for Art Program shall expend a minimum amount of 1% of the cost of the eligible school construction project or of any building or facility that is part of an eligible project or ~~$40,000~~ $50,000, whichever is less.

Donations and gifts to the contracting agency may be used to offset the minimum amount identified in this subsection. The value of works of art received as a donation or a gift ~~shall~~ must be determined by the commission.

Sec. 9. Transition to 4-year terms for Maine State Museum Commission members. The limit of 2 consecutive terms for members of the Maine State Museum Commission applies to full terms beginning after the effective date of this Act. Members holding office on the Maine State Museum Commission on the effective date of this Act or successors appointed to serve the remainder of those terms remain in office until expiration of the terms. After the effective date of this Act, the first 8 terms that expire must be filled by appointments, including reappointment of the incumbent, that expire on the anniversary date of that position in the year 2006. When the remaining 7 positions expire, they must be filled by appointments, including reappointment of the incumbent, that expire on the anniversary date of that position in the year 2008.

See title page for effective date.

CHAPTER 707

H.P. 1900 - L.D. 2644

An Act Relating to Eligibility for the Elderly Low-cost Drug Program

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

Sec. 1. 22 MRSA §254, sub-§11, as enacted by PL 1999, c. 551, §2, is amended to read:

11. Retention of eligibility. A person who was eligible for the program at any time from August 1, 1998 to July 31, 1999 and who does not meet the requirements of subsection 10 retains eligibility for the program ~~until February 28, 2001~~ if that person is a member of a household of an eligible person.

Sec. 2. 36 MRSA §6162-B, sub-§2, as enacted by PL 1999, c. 401, Pt. KKK, §5 and affected by §10 and c. 531, Pt. F, §2, is amended to read:

2. Limitation. An individual does not qualify under this program if that individual receives state supplemental income benefits or Medicaid pharmaceutical benefits.

See title page for effective date.

CHAPTER 708

S.P. 981 - L.D. 2524

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. 1 MRSA §2601, sub-§2, as enacted by PL 1979, c. 687, §1, is repealed.

Sec. 2. 1 MRSA §2603, sub-§1, as amended by PL 1985, c. 430, §2, is repealed.

Sec. 3. 5 MRSA §13070-N, as enacted by PL 1999, c. 401, Pt. AAA, §2, is reallocated to 5 MRSA §15310.

Sec. 4. 36 MRSA §111, sub-§2, as amended by PL 1981, c. 698, §175, is further amended to read:

2. Notice. "Notice" means notification served personally or mailed by certified or registered mail to the last known address of the person for whom the notification is intended.

If the State Tax Assessor attempts to give notice by certified or registered mail and the mailing is returned by the United States Postal Service with the notation "unclaimed" or "refused", ~~he~~ the assessor may then give notice, for purposes of this Title, by sending the notification by first-class mail to the person for whom the notification is intended at the address used on the returned certified or registered mail. Notice given in this manner ~~shall be~~ is deemed to be received 3 days after the first-class mailing, excluding Sundays and legal holidays.

In the case of a joint income tax return, notice may be a single joint notice except that, if the ~~State Tax Assessor~~ assessor is notified by either spouse that separate residences have been established, ~~he~~ the assessor shall mail a joint notice to each spouse.

If the person for whom notification is intended is deceased or under a legal disability, notice may be mailed to that person's last known address, unless the ~~State Tax Assessor~~ assessor has received notice of the existence of a fiduciary relationship with respect to that person, in which case notice ~~shall~~ must be mailed to the last known address of the fiduciary.

Sec. 5. 36 MRSA §113, as repealed and replaced by PL 1999, c. 16, Pt. E, §1 and affected by §4, is repealed and the following enacted in its place:

§113. Audit and collection expenses

1. Contract audit and collection programs. The State Controller may transfer from the General Fund and the Highway Fund amounts authorized by the State Tax Assessor equal to the expenses of those contract audit and collection programs for which the fees are contingent on the amount collected. These amounts transferred must be deposited into a dedicated, nonlapsing account to be used solely for the purpose of paying these expenses. Interest earned on balances in the account accrue to the account. The assessor shall notify the State Controller of the amounts to be transferred pursuant to this section. The assessor shall annually report to the joint standing committees of the Legislature having jurisdiction over taxation matters and appropriations and financial affairs the amounts collected and the costs incurred of programs administered pursuant to this section.

2. Credit card fees. The State Tax Assessor may subtract from revenues received credit card fees incurred by the assessor in connection with the following:

A. The collection of delinquent taxes imposed by this Title;

B. The collection of property taxes in the unorganized territory; and

C. The collection of income taxes for which telephonic returns are filed.

3. Federal offset fees. The State Tax Assessor may subtract from revenues received fees imposed upon the State by the United States Department of the Treasury for offsetting state income tax obligations against federal income tax refunds pursuant to Section 6402(e) of the Code.

Sec. 6. 36 MRSA §142, as amended by PL 1999, c. 414, §6 and c. 521, Pt. A, §1, is repealed and the following enacted in its place:

§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 assessor may, with the approval of the Governor or the Governor's designee, 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 assessor. The decision of the assessor pursuant to this section not to abate all or any part of any tax assessed under this Title is not subject to review under section 151.

Sec. 7. 36 MRSA §143, first ¶, as enacted by PL 1993, c. 486, §1, is amended to read:

The State Tax Assessor may compromise a tax liability arising under this Title upon the grounds of doubt as to liability or doubt as to collectibility, or both. Upon acceptance by the assessor of an offer in compromise, the liability of the taxpayer in question is conclusively settled and neither the taxpayer nor the assessor may reopen the case except by reason of falsification or concealment of assets by the taxpayer or mutual mistake of a material fact or if, in the opinion of the assessor, justice requires. The decision of the assessor to reject an offer in compromise is not subject to review under section 151. The assessor's authority to compromise a tax liability pursuant to this section is separate from and in addition to the assessor's authority to cancel or abate a tax liability pursuant to section 142.

Sec. 8. 36 MRSA §144, sub-§1, as enacted by PL 1995, c. 281, §5, is amended to read:

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

Sec. 9. 36 MRSA §177, sub-§1, as amended by PL 1995, c. 639, §4, is further amended to read:

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. An assessment against a responsible individual pursuant to this section must be made within 6 years from the date on which the return on which the taxes were required to be reported was filed. An assessment pursuant to this section may be made at any time with respect to a time period for which a return has become due but has not been filed.

Sec. 10. 36 MRSA §187-B, sub-§2, ¶A, as amended by PL 1999, c. 521, Pt. A, §3, is further amended to read:

A. Any person who fails to pay, on or before the due date, any amount shown as tax on any return required under this Title ~~or on any assessment made against the person~~ is liable for a penalty of 1% of the unpaid tax for each month or fraction of a month during which the failure continues, to a maximum in the aggregate of 25% of the unpaid tax.

Sec. 11. 36 MRSA §187-B, sub-§2, ¶A-1 is enacted to read:

A-1. Any person who fails to make and file any return required under this Title at or before the time the return becomes due against whom the assessor has made an assessment of tax pursuant to section 141 and who has not paid the tax on or before the date specified in that assessment is liable for a penalty of 1% of the unpaid tax for each month or fraction of a month during which the tax remains unpaid, calculated retroactively from the original due date of the unfiled return, to a maximum in the aggregate of 25% of the unpaid tax.

Sec. 12. 36 MRSA §187-B, sub-§5, as amended by PL 1997, c. 668, §14, is further amended to read:

5. Insufficient funds. Any person who makes payment of an amount due under this Title by means of a check or electronic funds transfer that is returned unpaid by the bank on which it is drawn because of insufficient funds or the closing or nonexistence of the account on which it is drawn is liable for a penalty of ~~$10~~ $20 or 1% of the payment amount, whichever is greater.

Sec. 13. 36 MRSA §187-B, sub-§7, as amended by PL 1997, c. 668, §16, is further amended to read:

7. Reasonable cause. For reasonable cause, the State Tax Assessor shall waive or abate any penalty imposed by subsection 1; subsection 2, paragraphs A and B; and subsections ~~4 and~~ 4-A~~;~~ and ~~subsection~~ 5-A. Reasonable cause includes, but is not limited to, the following:

A. The failure to file or pay resulted directly from erroneous information provided by the Bureau of Revenue Services;

B. The failure to file or pay resulted directly from the death or serious illness of the taxpayer or a member of the taxpayer's immediate family;

C. The failure to file or pay resulted directly from a natural disaster;

D. A return that was due monthly was filed and paid less than one month late and all of the taxpayer's returns and payments during the preceding 12 months were timely;

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

F. The taxpayer has supplied substantial authority justifying the failure to file or pay; or

G. The amount subject to a penalty imposed by subsections 1, 2 and 4-A; and subsection 5-A is de minimis when considered in relation to the amount otherwise properly paid, the reason for the failure to file or pay and the taxpayer's compliance history.

The burden of establishing grounds for waiver or abatement is on the taxpayer.

Sec. 14. 36 MRSA §191, sub-§2, ¶W, as amended by PL 1999, c. 414, §12, is further 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. 15. 36 MRSA §191, sub-§2, ¶X, as enacted by PL 1999, c. 414, §13, is amended 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~~.~~ ; and

Sec. 16. 36 MRSA §191, sub-§2, ¶Y is enacted to read:

Y. The disclosure by the State Tax Assessor, upon request in writing of any individual against whom an assessment has been made pursuant to section 177, subsection 1, of the following information:

(1) Information regarding the underlying tax liability to the extent necessary to apprise the individual of the basis of the assessment;

(2) The name of any other individual against whom an assessment has been made for the same underlying tax debt; and

(3) The general nature of any steps taken by the assessor to collect the underlying tax debt from any other individuals and the amount collected.

Sec. 17. 36 MRSA §191, sub-§3, as amended by PL 1995, c. 694, Pt. D, §61 and affected by Pt. E, §2, is further amended to read:

3. Additional restrictions for information provided by Internal Revenue Service. Federal returns and federal return information provided to the State by the Internal Revenue Service may not be disclosed to other states, districts and territories of the United States or provinces of Canada, to legislative committees or the agents of the committees~~, to any person retained on an independent contract basis or the employee of that person,~~ or to the Attorney General for the purpose of criminal investigations and prosecutions unrelated to this Title. These restrictions are in addition to those imposed by subsection 1. ~~Upon request by the Department of Human Services under Title 19 A, section 2152, information provided by the Internal Revenue Service concerning the location of interest bearing accounts in the names and social security numbers of delinquent payors of child support may be disclosed to an authorized representative of the Department of Human Services in the form of a list or automated computer match list.~~

Sec. 18. 36 MRSA §193, as amended by PL 1997, c. 668, §18, is further 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. When an electronic tax return is filed by a taxpayer or with the taxpayer's permission, the filing of that return constitutes a sworn statement by the taxpayer, made under the penalties of perjury, that the tax liability shown on the return is correct. 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 or $400,000 or more in annual payments of any other single tax type, and in the case of payroll processing companies as defined in Title 10, chapter 222, the

assessor may require payment or refund of a tax by electronic funds transfer. For the purposes of this section, "tax" includes unemployment insurance contributions required to be paid to the State pursuant to Title 26. 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 routine technical rule for the purposes of Title 5, chapter 375, subchapter II-A.

Sec. 19. 36 MRSA §198, sub-§3, ¶A, as enacted by PL 1985, c. 430, §3, is amended to read:

A. Section 1760, subsections 11 to 30~~.~~; and

Sec. 20. 36 MRSA §198, sub-§3, ¶B is enacted to read:

B. Chapter 105, subchapters IV and IV-B.

Sec. 21. 36 MRSA §578, sub-§1, as amended by PL 1997, c. 24, Pt. C, §4 and affected by §18, is further amended to read:

1. Organized areas. The municipal assessors or chief assessor of a primary assessing area shall adjust the State Tax Assessor's 100% valuation per acre for each forest type of their county by whatever ratio, or percentage of current just value, is ~~then being~~ applied to other property within the municipality to obtain the assessed values. Forest land in the organized areas, subject to taxation under this subchapter, must be taxed at the property tax rate applicable to other property in the municipality~~, which rate is applied to the assessed values so determined~~.

The State Tax Assessor shall pay any municipal claim found to be in satisfactory form within ~~90~~ 120 days after receipt of the claim.

~~In tax years beginning on or after April 1, 1988, the~~ The State Tax Assessor shall determine annually the amount of acreage in each municipality that is classified and taxed in accordance with this subchapter. ~~A municipality actually levying and collecting municipal property taxes and within whose boundaries this acreage lies~~ Each such municipality is entitled to annual payments from money appropriated by the Legislature ~~provided~~ if it submits an annual return in accordance with section 383 and if it achieves the appropriate minimum assessment ratio described in section 327. ~~For the property tax year based on the status of property on April 1, 1988, the per acre reimbursement amount increases from 15¢ to 24¢. For property tax years based on the status of property on April 1, 1989 or thereafter, the~~ The per acre reimbursement is 90% of the per acre tax revenue lost as a result of this subchapter. For purposes of this section, the tax lost is the tax that would have been assessed, but for this subchapter, on the classified forest lands if they were assessed according to the undeveloped acreage valuations used in the state valuation then in effect, or according to the current local valuation on undeveloped acreage, whichever is less, minus the tax that was actually assessed on the same lands in accordance with this subchapter. A municipality that fails to achieve the minimum assessment ratio established in section 327 loses 10% of the reimbursement provided by this section for each one percentage point the minimum assessment ratio falls below the ratio established in section 327.

No municipality may receive a reimbursement payment under this section that would exceed an amount determined by calculating the tree growth tax loss less the municipal savings in educational costs attributable to reduced state valuation.

A. The tree growth tax loss is the adjusted tax that would have been assessed, but for this subchapter, on the classified forest lands if they were assessed according to the undeveloped acreage valuations used in the state valuation then in effect minus the tax that was actually assessed on the same lands in accordance with this subchapter.

In determining the adjusted tax that would have been assessed, the tax rate to be used is computed by adding the additional school support required by the modified state valuation attributable to the increased valuation of forest land to the original tax committed and dividing this sum by the modified total municipal valuation. The adjusted tax rate is then applied to the valuation of forest land based on the undeveloped acreage valuations, adjusted by the certified ratio, to determine the adjusted tax.

B. The municipal savings in educational costs is determined by multiplying the school subsidy index by the change in state valuation attributable to the use of the valuations determined in accordance with this subchapter on classified forest lands rather than their valuation using the undeveloped acreage valuations used in the state valuation then in effect.

Sec. 22. 36 MRSA §1752, sub-§6-A, as amended by PL 1989, c. 501, Pt. V, §§1 and 5, is further amended to read:

6-A. Manufacturing facility. "Manufacturing facility" means a site at which ~~is~~ are located machinery and equipment used directly and primarily in either the production of tangible personal property intended to be sold or leased ultimately for final use or

consumption or the production of tangible personal property pursuant to a contract with the United States Government or any agency thereof. It includes the machinery and equipment and all machinery, equipment, structures and facilities located at the site and used in support of production or associated with the production. "Manufacturing facility" does not include a site at which a retailer is primarily engaged in making retail sales of tangible personal property not produced by the retailer.

Sec. 23. 36 MRSA §1752, sub-§11, ¶B, as amended by PL 1999, c. 488, §3 and c. 516, §2 and affected by §7, is repealed and the following enacted in its place:

B. "Retail sale" does not include:

(1) Any casual sale;

(2) Any sale by a personal representative in the settlement of an estate, unless the sale is made through a retailer, or unless the sale is made in the continuation or operation of a business;

(3) The sale, to a person engaged in the business of renting automobiles, of automobiles, integral parts of automobiles or accessories to automobiles, for rental or for use in an automobile rented on a short-term basis;

(4) The sale, to a person engaged in the business of renting audio or video tapes and audio or video equipment, of audio or video tapes or audio or video equipment for rental;

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

(6) The sale, to a person engaged in the business of providing cable television services, of cable converter boxes and remote-control units for rental or lease; or

(7) The sale, to a person engaged in the business of renting furniture, of furniture for rental.

Sec. 24. 36 MRSA §1758 is repealed and the following enacted in its place:

§1758. Use tax on interim rental of property purchased for resale

1. Definition. As used in this section, unless the context otherwise indicates, the term "rentals" includes any receipts derived from the use of property that is rented or leased.

2. Generally; tax imposed on rental payments. This section governs the taxation of tangible personal property that is purchased for resale in this State, other than at casual sale, and upon which no sales tax has been paid pursuant to chapters 211 to 225 when the property is rented or leased after purchase on an interim basis by the purchaser to another person prior to being sold. In lieu of the use tax otherwise imposed by section 1861, a tax is imposed at the same rate as that provided in the case of sales taxes by section 1811 upon all rentals received by the purchaser for the use of that property.

3. Exceptions. The purchaser is liable for a use tax on the property based on the purchase price less the aggregate amount of tax paid pursuant to this section on the rentals received by the purchaser in the following circumstances:

A. When the purchaser, after first renting tangible personal property purchased for resale, subsequently makes any use of that property other than as set forth in subsection 2; or

B. When the purchaser rents the property for a period of 12 months or more to any one person.

4. Other sections applicable. The tax on rentals imposed by this section is subject to section 1812 and all other pertinent provisions of this Part and for the purposes of this Part is treated the same as the sales tax imposed by section 1811 with the lessor deemed to be the retailer, the lease payments deemed to be the sale price and the lessee deemed to be the purchaser and consumer.

Sec. 25. 36 MRSA §1760, sub-§16, as amended by PL 1999, c. 485, §1, is further amended to read:

16. Hospitals, research centers, churches and schools. Sales to incorporated hospitals, incorporated nonprofit nursing homes licensed by the Department of Human Services, incorporated nonprofit ~~boarding~~ residential care facilities licensed by the Department of Human Services, incorporated nonprofit home health ~~care~~ agencies certified under the United States Social Security Act of 1965, Title XVIII, as amended, incorporated nonprofit rural community health centers engaged in, or providing facilities for, the delivery of comprehensive primary health care, incorporated nonprofit dental health centers, institutions incorporated as nonprofit corporations for the sole purpose of conducting medical research or for the purpose of establishing and maintaining laboratories for scientific study and investigation in the field of biology or ecology or operating educational television or radio stations, schools, incorporated nonprofit organizations

or their affiliates whose purpose is to provide literacy assistance or free clinical assistance to children with dyslexia and regularly organized churches or houses of religious worship, excepting sales, storage or use in activities that are mainly commercial enterprises. "Schools" means incorporated nonstock educational institutions, including institutions empowered to confer educational, literary or academic degrees, that have a regular faculty, curriculum and organized body of pupils or students in attendance throughout the usual school year and that keep and furnish to students and others records required and accepted for entrance to schools of secondary, collegiate or graduate rank, no part of the net earnings of which inures to the benefit of any individual.

Sec. 26. 36 MRSA §1760, sub-§23, as repealed and replaced by PL 1993, c. 395, §15, is amended to read:

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

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

B. Semitrailers;

C. Aircraft;

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

E. Camper trailers, including truck campers.

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

Notwithstanding section 1752-A, for purposes of this subsection, the term "nonresident" may include an individual, an association, a society, a club, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, a domestic or foreign corporation and any other legal entity.

Sec. 27. 36 MRSA §1760, sub-§25, as amended by PL 1997, c. 668, §24, is further amended to read:

25. Watercraft sold to nonresidents. Sales of watercraft in this State to ~~nonresidents~~ a nonresident, when such craft ~~are~~ is either delivered outside the State or delivered in the State to be sailed or transported outside the State immediately upon delivery by the seller; ~~and any~~ sales to ~~nonresidents~~ a nonresident, under contracts for the construction of any such ~~craft~~ watercraft to be so delivered, of materials to be incorporated in the watercraft; and ~~any~~ sales to ~~nonresidents~~ a nonresident for the repair, alteration, refitting, reconstruction, overhaul or restoration of any such ~~craft~~ watercraft to be so delivered, of materials to be incorporated in the watercraft. Unless the ~~craft~~ watercraft is present in the State, for a purpose other than temporary storage, for more than 30 days during the 12-month period following its date of purchase or is registered in Maine without also being registered in another state or documented with a location in this State, within 12 months of the date of purchase, the purchaser is exempt from the use tax. Notwithstanding section 1752-A, for purposes of this subsection, the term "nonresident" may include an individual, an association, a society, a club, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, a domestic or foreign corporation and any other legal entity.

Sec. 28. 36 MRSA §1760, sub-§28, as amended by PL 1995, c. 560, Pt. K, §82 and affected by §83, is further amended to read:

28. Community mental health facilities, community mental retardation facilities and community substance abuse facilities. Sales to mental health facilities ~~or~~, mental retardation facilities ~~which~~ or substance abuse facilities that are:

A. Contractors under or receiving support under the Federal Community Mental Health Centers Act, or its successors; or

B. Receiving support from the Department of Mental Health, Mental Retardation and Substance Abuse Services pursuant to Title 5, section 20005 or Title 34-B, section 3604, 5433 or 6204.

Sec. 29. 36 MRSA §1760, sub-§45, ¶A-1, as amended by PL 1995, c. 467, §17, is further amended to read:

A-1. If the property is a watercraft or all-terrain vehicle that is registered outside the State by an owner who at the time of purchase was a resident of another state and the watercraft or all-terrain vehicle is present in the State not more than 30 days during the 12 months following its purchase for a purpose other than temporary storage; or

Sec. 30. 36 MRSA §1760, sub-§72, as enacted by PL 1989, c. 871, §15, is amended to read:

72. Nonprofit housing development organization. Sales to nonprofit organizations ~~for the development of~~ whose primary purpose is to develop housing for low-income people.

Sec. 31. 36 MRSA §1760-C, as enacted by PL 1999, c. 521, Pt. A, §8, is amended to read:

§1760-C. Exempt activities

Unless otherwise provided by section 1760, the sales or use tax exemptions provided by that section to ~~a purchaser~~ an entity based upon its charitable, nonprofit or other public purposes apply only if the property or service ~~sold~~ purchased is intended to be used by the ~~purchaser~~ entity primarily in the activity identified by the particular exemption. Exemption certificates issued by the State Tax Assessor pursuant to section 1760 must identify the exempt activity and must state that the certificate may be used by the holder only to purchase property or services intended to be used by the holder primarily in the exempt activity. When an otherwise qualifying exempt person is engaged in both exempt and nonexempt activities, an exemption certificate may be issued to the person only if the person has established to the satisfaction of the assessor that the applicant has adequate accounting controls to limit the use of the certificate to exempt purchases.

Sec. 32. 36 MRSA §2013, sub-§1, ¶C, as amended by PL 1997, c. 514, §1, is further amended to read:

C. "Depreciable machinery and equipment" means that part of the following machinery and equipment for which depreciation is allowable under the Code and repair parts for that machinery and equipment:

(1) New or used machinery and equipment for use directly and primarily in commercial agricultural production, including self-propelled vehicles, but excluding motor vehicles as defined in section 1752, subsection 7; attachments and equipment for the production of field and orchard crops; new or used machinery and equipment for use directly and primarily in production of milk, animal husbandry and production of livestock, including poultry; and new or used machinery and equipment not used directly and primarily in commercial agricultural production, but used ~~exclusively~~ to transport potatoes from a truck into a storage location;

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

(3) New or used watercraft, machinery or equipment used directly and primarily for commercial aquacultural production, including, but not limited to: nets; ropes; cables; anchors and anchor weights; shackles and other hardware; buoys; fish tanks; fish totes; oxygen tanks; pumping systems; generators; water-heating systems; boilers and related pumping systems; diving equipment; feeders and related equipment; power-generating equipment; tank water-level sensors; aboveground piping; water-oxygenating systems; fish-grading equipment; safety equipment; and sea cage systems, including walkways and frames, lights, netting, buoys, shackles, ropes, cables, anchors and anchor weights; but excluding motor vehicles as defined in section 1752, subsection 7.

Sec. 33. 36 MRSA §5102, sub-§6, as amended by PL 1997, c. 668, §29, is repealed and the following enacted in its place:

6. Corporation. "Corporation" means any business entity subject to income taxation as a corporation under the laws of the United States, except the following:

A. A corporation that is subject to tax under chapter 357 or that would be subject to tax under chapter 357 if the insurance business conducted by such corporation were conducted in this State;

B. A corporation subject to tax under section 5206; or

C. A business entity referred to in Title 24-A, section 1157, subsection 5, paragraph B, subparagraph (1).

Sec. 34. 36 MRSA §5122, sub-§2, ¶K, as amended by PL 1999, c. 521, Pt. C, §5 and affected by §9, is further amended to read:

K. For income tax years beginning on or after January 1, 1997, all items of income, gain, interest, dividends, royalties and other income of a financial institution subject to the tax imposed by section 5206, to the extent that those items are passed through to the taxpayer for federal income tax purposes, including, if the financial institution is an S corporation, the taxpayer's pro rata share and, if the financial institution is a partnership or limited liability company, the taxpayer's distributive share. A subtraction may not be made under this paragraph for:

(1) Income of the taxpayer earned on interest-bearing or similar accounts of the taxpayer at a financial institution as a customer of that financial institution;

(2) Any dividends or other distributions with respect to a taxpayer's ownership interest in a financial institution; and

(3) Any gain recognized on the disposition by the taxpayer of an ownership interest in a financial institution; ~~and~~

Sec. 35. 36 MRSA §5122, sub-§2, ¶L, as enacted by PL 1999, c. 521, Pt. C, §6 and affected by §9, is amended to read:

L. For income tax years beginning on or after January 1, 2000, an amount equal to the total premiums spent for qualified long-term care insurance contracts as defined in the Code, Section 7702B(b), as long as the amount subtracted is reduced by the long-term care premiums claimed as an itemized deduction pursuant to ~~Section~~ section 5125~~.~~ ; and

Sec. 36. 36 MRSA §5122, sub-§2, ¶M is enacted to read:

M. Interest or dividends on obligations or securities of this State and its political subdivisions and authorities to the extent included in federal adjusted gross income.

Sec. 37. 36 MRSA §5125, sub-§3, as repealed and replaced by PL 1995, c. 281, §28, is amended to read:

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

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

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

C. Reduced by any amount of deduction related to income taxable to financial institutions under chapter 819.

Sec. 38. 36 MRSA §5164, sub-§1, as enacted by P&SL 1969, c. 154, §F, §1, is amended to read:

1. Fiduciary adjustment defined. The fiduciary adjustment ~~shall be~~ is the net amount of the modifications described in section 5122, including subsection 3 if the estate or trust is a beneficiary of another estate or trust, which relates to items of income or deduction of an estate or trust. Income taxes imposed by this State or any other taxing jurisdiction and interest or expenses incurred in the production of income exempt from tax under this Part deducted in arriving at federal taxable income must be added back to the fiduciary adjustment. Interest or expenses incurred in the production of income taxable under this Part but exempt from federal income tax must be subtracted from the fiduciary adjustment.

Sec. 39. 36 MRSA §5200-A, sub-§2, ¶I, as amended by PL 1999, c. 521, Pt. B, §4 and affected by §11, is further amended to read:

I. For income tax years beginning on or after January 1, 1997, all items of income, gain, interest, dividends, royalties and other income of a financial institution subject to the tax imposed by section 5206, to the extent that those items are passed through to the taxpayer for federal income tax purposes, including, if the financial institution is an S corporation, the taxpayer's pro rata share and, if the financial institution is a partnership or limited liability company, the taxpayer's distributive share. A subtraction may not be made under this paragraph for:

(1) Income of the taxpayer earned on interest-bearing or similar accounts of the taxpayer at a financial institution as a customer of that financial institution;

(2) Any dividends or other distributions with respect to a taxpayer's ownership interest in a financial institution; and

(3) Any gain recognized on the disposition by the taxpayer of an ownership interest in a financial institution; ~~and~~

Sec. 40. 36 MRSA §5200-A, sub-§2, ¶J, as enacted by PL 1999, c. 521, Pt. B, §5 and affected by §11, is amended to read:

J. An amount equal to an income tax refund to the taxpayer by this State or another state of the United States that is included in that taxpayer's federal taxable income for the taxable year under the Code, but only to the extent that:

(1) Maine net income is not reduced below zero; and

(2) The amount to be refunded from this State or another state of the United States has not been previously used as a modification pursuant to this subsection.

If this modification amount results in Maine net income that is less than zero for the taxable year, the negative modification amount may be carried back or forward in the same manner as a net op-

erating loss deduction carry-back or carry-forward to a taxable year that is within the allowable federal period for a carry-back or carry-forward, subject to the above limitations. ; and

Sec. 41. 36 MRSA §5200-A, sub-§2, ¶K is enacted to read:

K. Interest or dividends on obligations or securities of this State and its political subdivisions and authorities to the extent included in federal taxable income.

Sec. 42. 36 MRSA §5206-D, sub-§8, ¶C, as enacted by PL 1997, c. 404, §5 and affected by §10, is amended to read:

C. A bank holding company, as defined in the federal Bank Holding Company Act of 1956, 12 United States Code, Section 1841, or a savings and loan holding company, as defined in the National Housing Act, 12 United States Code, Section 1701 12 United States Code, Section 1467a(a)(1)(D); or

Sec. 43. 36 MRSA §5211, sub-§10, as enacted by P&SL 1969, c. 154, §F, is amended to read:

10. Property valuation at original cost. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at 8 times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

Sec. 44. 36 MRSA §5215, sub-§3, ¶B, as amended by PL 1999, c. 414, §45 and affected by §56, 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. 45. 36 MRSA §5217, sub-§3, as repealed and replaced by PL 1987, c. 769, Pt. A, §159, is amended to read:

3. Carryover; carry back. The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the amount of tax otherwise due under this section Part. Any unused credit may be carried over to the following year or years for a period not to exceed 15 years or it may be carried back for a period not to exceed 3 years.

Sec. 46. 36 MRSA §5219-G, sub-§1, as enacted by PL 1999, c. 521, Pt. B, §8 and affected by §11, is amended to read:

1. Tax credits for partners and S corporation shareholders. Each partner of a partnership or shareholder of an S corporation is allowed a credit against the tax imposed by chapter 803 this Part in an amount equal to the partner's or shareholder's pro rata share of the tax credits described in this chapter, except that in the case of credits attributable to a financial institution subject to tax under chapter 819, the credits are allowable only against the tax imposed by that chapter. A partner's pro rata share must equal the partner's percentage interest in the taxable income or loss of the partnership for federal income tax purposes for the taxable year. The pro rata share of a shareholder of an S corporation must equal the shareholder's percentage share of stock of the S corporation as of the end of the taxable year.

Sec. 47. 36 MRSA §5219-Q, as enacted by PL 1999, c. 401, Pt. NNN, §6 and affected by §§8 and 9, is amended to read:

§5219-Q. Quality child care investment credit

1. Definition. As used in this section, unless the context otherwise indicates, "quality child care services" means care services provided at a child care site that meets minimum licensing standards and:

A. Is accredited by an independent, nationally recognized program approved by the Department of Human Services, Office of Head Start and Child Care;

B. Utilizes recognized quality indicators for child care services approved by the Department of Human Services, Office of Head Start and Child Care; and

C. Includes provisions for parent and client input, a review of the provider's policies and procedures, a review of the provider's program records and an on-site program review.

For large, ~~multi-function~~ multifunction agencies, only those portions of the child care sites that were reviewed by the accrediting body may be considered sites that provide quality child care ~~sites~~ services.

1-A. Certification. Upon application by an investor, the Department of Human Services, Office of Head Start and Child Care shall certify if an investment in a child care site contributed significantly toward the ability of the child care site to improve its level of child care services toward the goal of providing quality child care services. The department shall send a list of taxpayers making certified investments in the previous year to the State Tax Assessor by February 1st annually.

2. Credit allowed. A taxpayer that has made an investment in child care services certified under subsection 1-A during the tax year is allowed a credit against the tax imposed by this Part in an amount equal to the qualifying portion of expenditures paid or expenses incurred by the taxpayer for certified investments in child care services as calculated pursuant to subsection 3.

3. Qualifying portion. For purposes of calculating the credit provided by this section, the qualifying portion is:

A. For a corporation, 30% of up to $30,000 of expenditures, apportioned if part of an affiliated group engaged in a unitary business; and

B. For an individual taxpayer, if the taxpayer expends at least $10,000 in one year, $1,000 each year for 10 years and $10,000 at the end of the 10-year period.

4. Limitation; carry-over. The credit ~~allowed under subsection 2~~ provided by this section may not reduce the tax otherwise due under this Part below zero. Any unused portion of the credit may be carried over to the following year or years until exhausted.

Sec. 48. 36 MRSA §5219-R, as reallocated by RR 1999, c. 1, §50, is amended to read:

§5219-R. Credit for rehabilitation of historic properties

A taxpayer is allowed a credit against the tax imposed under this Part equal to the amount of credit claimed by the taxpayer under Section 47 of the Code with respect to a certified historic structure located in the State. The credit is nonrefundable and is limited to $100,000 annually per taxpayer. A credit received under this section is subject to the same recapture provisions as apply to a credit received under Section 47 of the Code and to any available federal carry-back or carry-forward provisions.

Sec. 49. 36 MRSA §5278, sub-§1, as amended by PL 1999, c. 521, Pt. B, §10 and affected by §11, is further amended to read:

1. General. A claim for credit or refund of an overpayment of any tax imposed by this Part must be filed by the taxpayer within 3 years from the time the return was filed, whether or not the return was timely filed, or 3 years from the time the tax was paid, whichever of such periods expires the later. A credit or refund is not allowed or may not be made after the expiration of the period of limitation prescribed in this subsection for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such a period. For purposes of this subsection, any return filed before the last day prescribed for the filing of a return is considered as filed on that last day.

Sec. 50. 36 MRSA §6215, as enacted by PL 1987, c. 516, §§3 and 6, is amended to read:

§6215. Extension of time for filing claims

In case of sickness, absence or other disability, or if, in ~~his~~ the judgment of the State Tax Assessor, good cause exists, the ~~State Tax Assessor~~ assessor may extend, for a period not to exceed 6 months, the time for filing a claim. A request for an extension may be submitted at any time during the 6-month extension period.

Sec. 51. Application. The section of this Act that amends the Maine Revised Statutes, Title 36, section 5102, subsection 6 applies to all open tax periods.

Sec. 52. Retroactivity. Those sections of this Act that amend the Maine Revised Statutes, Title 36, section 1760, subsections 23 and 25 apply retroactively to sales made on or after June 5, 1999.

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

Effective April 14, 2000.

CHAPTER 709

H.P. 11 - L.D. 21

An Act Relating to MTBE