

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND NINETEENTH LEGISLATURE
SECOND REGULAR SESSION
January 5, 2000 to May 12, 2000

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 11, 2000

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
2000

CHAPTER 754

H.P. 1694 - L.D. 2400

**An Act to Create Employment
Opportunities by Clarifying Maine's
Tax Laws Regarding Mutual Fund
Companies**

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

Sec. 1. 36 MRSA §5212 is enacted to read:

**§5212. Apportionment of income of mutual fund
service providers**

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Administration services" includes, but is not limited to, clerical, fund or shareholder accounting; participant record-keeping; transfer agency; bookkeeping; data processing; custodial; internal auditing; legal; and tax services performed for a regulated investment company. Services qualify as administration services only if the provider of such service or services during the taxable year also provides, or is affiliated with a person that provides, management or distribution services to the same regulated investment company during the same taxable year.

B. "Distribution services" includes, but is not limited to, the services of advertising, servicing, marketing or selling shares of a regulated investment company. The services of advertising, servicing or marketing shares qualify as distribution services only when the service is performed by a person who is or, in the case of a closed-end company, was either engaged in the services of selling regulated investment company shares or affiliated with a person that is engaged in the service of selling regulated investment company shares. In the case of an open-end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to 15 United States Code, Section 80a-15(b), as amended.

C. "Domicile" of a shareholder of a regulated investment company is presumed to be the shareholder's mailing address on the records of the regulated investment company or the mutual fund service provider. If the regulated investment company or the mutual fund service provider has actual knowledge that the shareholder's primary residence or principal place of business is different than the shareholder's mailing address, the presumption does not control. If the

shareholder of record is a person that holds the shares of a regulated investment company as depositor for the benefit of a separate account, then the shareholder of record is the contract owner or policyholder of the contracts or policies supported by the separate account, and it is presumed that the domicile of that shareholder of record is the contract owner's or policyholder's mailing address to the extent that the regulated investment company maintains such mailing addresses in the regular course of business. If the shareholder's principal place of business is different than the shareholder's mailing address, the presumption does not control.

D. "Management services" includes, but is not limited to, the rendering of investment advice directly or indirectly to a regulated investment company, making determination as to when sales and purchases of securities are to be made on behalf of the regulated investment company or the selling or purchasing of securities constituting assets of a regulated investment company and related activities. Services qualify as management services only when such activity or activities are performed pursuant to a contract with the regulated investment company entered into pursuant to 15 United States Code, Section 80a-15(a), as amended, for a person that has entered into such contract with the regulated investment company or for a person that is affiliated with a person that has entered into such contract with a regulated investment company.

E. "Mutual fund service provider" means any taxpayer subject to tax under this Part, other than a financial institution as defined in section 5206-D, subsection 8, that derives more than 50% of its gross income from the direct or indirect provision of management, distribution or administration services to or on behalf of a regulated investment company or from trustees, sponsors and participants of employee benefit plans that have accounts in a regulated investment company.

F. "Regulated investment company" means a regulated investment company as defined in the Code, Section 851.

2. Election of special apportionment of formula for mutual fund service providers. Notwithstanding any other provision of this Title, a mutual fund service provider may elect to apportion its net income by the method provided for in this section. The election, if made, is irrevocable for successive periods of 5 years. The net income of an electing mutual fund service provider may be apportioned to this State as follows.

A. Net income is multiplied by a fraction, the numerator of which is the Maine receipts during the taxable year and the denominator of which is the total receipts everywhere for the same taxable year.

B. For purposes of this subsection, Maine receipts from the direct or indirect provision of management, distribution or administration services to or on behalf of a regulated investment company or from trustees, sponsors and participants of employee benefit plans that have accounts in a regulated investment company are determined by multiplying total receipts for the taxable year from each separate regulated investment company for which the mutual fund service provider performs management, distribution or administration services by a fraction. The numerator of the fraction is the average of the number of shares owned by the regulated investment company's shareholders domiciled in this State at the beginning of and at the end of the regulated investment company's taxable year, and the denominator of the fraction is the average of the number of the shares owned by the regulated investment company's shareholders everywhere at the beginning of and at the end of the regulated investment company's taxable year.

C. Receipts other than from the provision of services described in paragraph B are Maine receipts if they would qualify as Maine sales under section 5211, subsection 15 or 16.

3. Combined reporting not applicable. Notwithstanding any other provision of this Title, a mutual fund service provider that has elected the apportionment method provided for in this section is not required to file a combined report, and neither the income nor the property, payroll or sales of a mutual fund service provider that has elected the apportionment method provided for in this section may be included in a combined report of another taxpayer.

Sec. 2. Application. This Act applies to tax years beginning on or after January 1, 2001.

Sec. 3. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

2000-01

**ECONOMIC AND
COMMUNITY
DEVELOPMENT,
DEPARTMENT OF**

**Administration – Economic
and Community Development**

All Other (\$14,642)

Deappropriates funds to cover the projected General Fund revenue loss in fiscal year 2000-01. It is the intent of the Legislature that the Commissioner of Economic and Community Development submit General Fund appropriation requests that otherwise reduce "current services" appropriations by \$36,897 in fiscal year 2001-02 and \$37,635 in fiscal year 2002-03. The commissioner shall report to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs by January 5, 2001 documenting these reductions and the effect on the department's programs.

See title page for effective date.

CHAPTER 755

H.P. 1817 - L.D. 2551

**An Act to Implement the
Recommendations of the Committee
on Sawmill Biomass**

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

Sec. 1. 36 MRSA §5219-S is enacted to read:

§5219-S. Credit for consumption of wood processing residue

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Affiliated" means a common ownership greater than 10% between one entity and another by means of financial interest or legal control whether directly or indirectly through one or more intermediaries or common owners.

B. "Authorized consumption" means use of wood processing residue for: