LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

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Augusta, Maine
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providers that make substantial progress towards meeting nationally recognized quality standards.

See title page for effective date.

CHAPTER 395

H.P. 42 - L.D. 51

An Act to Increase the Penalty for Furnishing Liquor to a Minor if Injury or Death Results

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

Sec. 1. 28-A MRSA §2081, sub-§3, as amended by PL 1993, c. 266, §31, is further amended to read:

3. Penalties. ~~Any~~ Except as provided in subsection 5, any person who violates subsection 1, paragraph A or B commits a Class D crime. Any person who violates subsection 1, paragraph C or D commits a Class E crime, for which a forfeiture of not more than $500 may be adjudged. In the case of a person who has one previous conviction of a violation of subsection 1, paragraph A or B within a 6-year period, the fine may not be less than $500, which penalty may not be suspended. In the case of a person who has 2 or more previous convictions of a violation of subsection 1, paragraph A or B within a 6-year period, the fine may not be less than $1,000. In the case of a person who has no previous conviction of subsection 1, paragraph A or B within a 6-year period, the fine may not be less than $500, which penalty may not be suspended if that person is convicted of a violation of subsection 1, paragraph A or B involving a minor less than 14 years old.

Sec. 2. 28-A MRSA §2081, sub-§5 is enacted to read:

5. Aggravated offense. A person who violates subsection 1, paragraph A or B commits a Class C crime if the consumption of the liquor by the minor in fact causes serious bodily injury to or death of any individual, including the minor. For purposes of this subsection, "serious bodily injury" has the same meaning as set out in Title 17-A, section 2, subsection 23.

See title page for effective date.

CHAPTER 396

H.P. 1190 - L.D. 1613

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. 36 MRSA §111, sub-§2, as amended by PL 1999, c. 708, §4, is further amended to read:

2. Notice. "Notice" means notification served personally or mailed by certified or registered mail or by any courier service providing evidence of delivery 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 or by courier and the mailing is returned ~~by the United States Postal Service~~ with the notation "unclaimed" or "refused" or a similar notation, 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 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 assessor is notified by either spouse that separate residences have been established, 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 assessor has received notice of the existence of a fiduciary relationship with respect to that person, in

which case notice must be mailed to the last known address of the fiduciary.

Sec. 2. 36 MRSA §112, sub-§7-A, as amended by PL 1997, c. 526, §7, is further amended to read:

7-A. Taxpayer Bill of Rights. The assessor shall prepare a statement describing in simple and nontechnical terms the rights of a taxpayer and the obligations of the bureau during an audit. The statement must also explain the procedures by which a taxpayer may appeal any adverse decision of the assessor, including the informal conference and judicial appeals. This statement must be distributed by the bureau to any taxpayer contacted with respect to the determination or collection of any tax, excluding the normal mailing of tax forms. This paragraph does not apply to criminal tax investigations conducted by the assessor or by the Attorney General.

Sec. 3. 36 MRSA §135, sub-§1, as amended by PL 1995, c. 281, §4, is further amended to read:

1. Taxpayers. Persons subject to tax under this Title shall maintain such records as the State Tax Assessor determines necessary for the reasonable administration of this Title. Records pertaining to taxes imposed by chapters 371 and 575 and by Part 8 must be retained as long as is required by applicable federal law and regulation. Records pertaining to the special fuel tax user reports filed pursuant to section 3209, subsection 2 and the International Fuel Tax Agreement pursuant to section 3209, subsection 1-B must be retained for 4 years. Records pertaining to all other taxes imposed by this Title must be retained for a period of at least 6 years. The records must be kept in such a manner as to ensure their security and accessibility for inspection by the assessor or any designated agent engaged in the administration of this Title.

Sec. 4. 36 MRSA §141, sub-§2, ¶C, as enacted by PL 1979, c. 378, §4, is amended to read:

C. An assessment may be made at any time with respect to a time period for which a return has become due but has not been filed. If any person failing to file a return fails to produce, within ~~a reasonable time~~ 30 days after notice, information ~~which~~ that the State Tax Assessor believes necessary to determine tax liability for the period involved, the State Tax Assessor may assess an estimated tax liability based upon the best information otherwise available. In any proceeding for the collection of tax for the period involved, that estimate ~~shall constitute~~ constitutes prima facie evidence of the tax liability. The 30-day period provided by this paragraph is extended for up to 90 days if the taxpayer requests an extension in writing prior to the expiration of the 30-day period.

Sec. 5. 36 MRSA §144, sub-§1, as amended by PL 1999, c. 708, §8, is further amended to read:

1. Generally. A taxpayer may request a credit or refund of any tax imposed by this Title or administered by the State Tax Assessor 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. 6. 36 MRSA §176-A, sub-§2, ¶E, as enacted by PL 1989, c. 880, Pt. E, §3, is amended to read:

E. The effect of a levy on salary or wages payable to or received by a taxpayer is continuous from the date the levy is first made until the liability out of which the levy arose is satisfied. ~~A~~ Except as otherwise provided by this paragraph, a levy on any other intangible personal property or rights to intangible personal property remains in effect until ~~6 months~~ one year after the date that notice of levy and demand under subsection 3, paragraph A, is served on the person in possession of or liable to the taxpayer with respect to intangible personal property, including property that is first possessed or liabilities that arise after the date of service of the notice of levy and demand; except that a levy upon property held by a financial institution described in subsection 3, paragraph A, only extends to accounts in existence on the date the notice of levy and demand is served on the financial institution, but includes deposits made or collected in those accounts after the notice is served. A levy on intangible personal property or rights to intangible personal property, ownership of which is disputed at the time the levy is issued, remains in effect until one year after the dispute is resolved by competent authority.

Sec. 7. 36 MRSA §176-A, sub-§3, ¶A, as enacted by PL 1989, c. 880, Pt. E, §3, is amended to read:

A. Except as otherwise provided in paragraph B, any person in possession of, or obligated with respect to, property or rights to property subject to levy upon which a levy has been made shall, upon demand of the assessor, surrender any such

property or rights or discharge any such obligation to the assessor within 21 days after receipt of the notice of levy, except that part of the property or rights as is, at the time of the demand, subject to an attachment or execution under any judicial process. It is a defense to the liability imposed by this subsection that the person refusing to comply with the terms of a notice of a levy or that person's bailor has a valid claim against the delinquent taxpayer accruing prior to service of the notice or a valid security interest or lien upon the property of the taxpayer perfected prior to service of the notice; but this defense exonerates the person refusing to comply from liability only to the extent of that claim, security interest or lien.

Any financial institution chartered under state or federal law, including, but not limited to, trust companies, savings banks, savings and loan associations, national banks and credit unions, shall surrender to the assessor any deposits, including any interest in the financial institution that would otherwise be required to be surrendered under this subsection only after 21 days after service of levy, but not later than 30 days after service of levy. Except as provided in subsection 5, paragraph D, with respect to a levy on salary or wages, any person in possession of, or obligated with respect to, property subject to a continuing levy against intangible personal property, which property is first possessed or which obligation first arises subsequent to service of a notice of levy on such person, shall, upon demand of the assessor, surrender the property or rights, or discharge the obligation to the assessor within 30 days after the property is first possessed or the obligation first arises.

Sec. 8. 36 MRSA §187-B, sub-§1, as amended by PL 1999, c. 521, Pt. A, §2, is further amended to read:

1. Failure to file return. Any person who fails to make and file any return required under this Title at or before the time the return becomes due is liable for one of the following penalties if the person's tax liability shown on such return or otherwise determined to be due is greater than $25.

A. If the return is filed before or within 30 days after the taxpayer receives from the assessor a formal demand that the return be filed, or if the return is not filed but the tax due is assessed by the assessor before the taxpayer receives from the assessor a formal demand that the return be filed, the penalty is $25 or 10% of the tax due, whichever is greater.

B. If the return is not filed within 30 days after the taxpayer receives from the assessor a formal demand that the return be filed, the penalty is 100% of the tax due.

C. If the return is not filed and the assessor issues a jeopardy assessment pursuant to section 141, subsection 2, paragraph D, the penalty is 100% of the tax due.

This subsection does not apply to any return required pursuant to chapter 459 and administered pursuant to the International Fuel Tax Agreement.

Sec. 9. 36 MRSA §187-B, sub-§2, as amended by PL 1999, c. 708, §§10 and 11, are further amended to read:

2. Failure to pay. The following penalties apply.

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 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.

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.

B. Any person who fails to pay a tax assessment for which no further administrative or judicial review is available pursuant to section 151 and the Maine Administrative Procedure Act is liable for a penalty in the amount of 25% of the amount of the tax due if the payment of the tax is not made within 10 days of the person's receipt of notice of demand for payment as provided by this Title. This penalty must be explained in the notice of demand and is final when levied.

This subsection does not apply to taxes due pursuant to chapter ~~369~~ 459 and administered pursuant to the terms of the International Fuel Tax Agreement.

Sec. 10. 36 MRSA §187-B, sub-§7, as amended by PL 1999, c. 708, §13, 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-A and 5-A; or by the terms of the International Fuel Tax Agreement. 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. 11. 36 MRSA §191, sub-§2, ¶Q, as repealed and replaced by PL 1995, c. 625, Pt. A, §46, is amended to read:

Q. The listing of licensed special fuel suppliers possessing certificates under section 3204 and registered suppliers possessing certificates under section 3205;

Sec. 12. 36 MRSA §457, sub-§8, as enacted by PL 1991, c. 121, Pt. B, §2 and affected by §18, is amended to read:

8. Penalty. Underpayment of the tax imposed by this section and the prepayment of estimated tax required by this section are subject to the penalties imposed by section ~~187~~ 187-B.

Sec. 13. 36 MRSA §653, sub-§1, ¶D-1, as amended by PL 1999, c. 462, §3, is further amended to read:

D-1. The estates up to the just value of $47,500, having a taxable situs in the place of residence, for specially adapted housing units, of veterans who served in the Armed Forces of the United States during any federally recognized war period, including the Korean Campaign, the Vietnam War and the Persian Gulf War, and who are paraplegic veterans within the meaning of ~~the~~ 38 United States Code, ~~Title 38,~~ Chapter 21, Section 2101, and who received a grant from the United States Government for any such housing, or of the unremarried widows of such veterans. A veteran of the Vietnam War must have served on active duty for a period of more than 180 days, any part of which occurred after February 27, 1961 and before May 8, 1975 in the case of a veteran who served in the Republic of Vietnam during that period and after August 4, 1964 and before May 7, 1975 in all other cases, unless the veteran died in service or was discharged for a service-connected disability after that date. "Vietnam War" means the period between August 5, 1964 and May 7, 1975 and the period beginning on February 28, 1961 and ending on May 7, 1978 in the case of a veteran who served in the Republic of Vietnam during that period. "Persian Gulf War" means service on active duty on or after August 7, 1990 and before or on the date that the United States Government recognizes as the end of that war period. The exemption provided in this paragraph applies to the property of the veteran including property held in joint tenancy with a spouse or held in a revocable living trust for the benefit of that veteran.

Sec. 14. 36 MRSA §660, as repealed and replaced by PL 1979, c. 687, §4, is repealed.

Sec. 15. 36 MRSA §841, sub-§7, as enacted by PL 1979, c. 73, is amended to read:

7. Assessors defined. For the purposes of this ~~section~~ subchapter the word "assessors" ~~shall include~~ includes assessor, chief assessor of a primary assessing area and State Tax Assessor for the unorganized territory.

Sec. 16. 36 MRSA §842, as amended by PL 1991, c. 546, §11, is further amended to read:

§842. Notice of decision

The assessors~~,~~ or municipal officers~~, chief assessor or the State Tax Assessor, in the case of the unorganized territory,~~ shall give to any person applying to them for an abatement of taxes notice in writing of their decision upon the application within 10 days after they take final action thereon. The notice of decision must state that the applicant has 60 days from the date the notice is received to appeal the

decision. It must also identify the board or agency designated by law to hear the appeal. If the assessors~~,~~ or municipal officers~~, chief assessor or State Tax Assessor~~, before whom an application in writing for the abatement of a tax is pending, ~~fails~~ fail to give written notice of their decision within 60 days from the date of filing of the application, the application is deemed to have been denied, and the applicant may appeal as provided in sections 843 and 844, unless the applicant has in writing consented to further delay. Denial in this manner is final action for the purposes of notification under this section but failure to send notice of decision does not affect the applicant's right of appeal. This section does not apply to applications for abatement made under section 841, subsection 2.

Sec. 17. 36 MRSA §843, sub-§2, as amended by PL 1995, c. 262, §4, is further amended to read:

2. Primary assessing areas. If a primary assessing area has adopted a board of assessment review and the ~~chief assessor,~~ assessors or municipal ~~officer or the State Tax Assessor refuses~~ officers refuse to make the abatement asked for, the applicant may apply in writing to the board of assessment review within 60 days after notice of the decision from which the appeal is being taken or after the application is deemed to have been denied, and if the board thinks the applicant is over-assessed, the applicant is granted such reasonable abatement as the board thinks proper. Except with regard to nonresidential property or properties with an equalized municipal valuation of $1,000,000 or greater, either separately or in the aggregate, either party may appeal the decision of the board of assessment review directly to the Superior Court, in accordance with the Maine Rules of Civil Procedure, Rule 80B. If the board of assessment review fails to give written notice of its decision within 60 days of the date the application was filed, unless the applicant agrees in writing to further delay, the application is deemed denied and the applicant may appeal to the Superior Court as if there had been a written denial.

Sec. 18. 36 MRSA §844, sub-§1, as amended by PL 1995, c. 262, §5, is further amended to read:

1. Municipalities without board of assessment review. Except when the municipality or primary assessing area has adopted a board of assessment review, if the assessors or the municipal officers refuse to make the abatement asked for, ~~or, with respect to a primary assessing area, the chief assessor, municipal officer or State Tax Assessor refuses to make the abatement asked for,~~ the applicant may apply to the county commissioners within 60 days after notice of the decisions from which the appeal is being taken or within 60 days after the application is deemed to have been denied. If the commissioners think that the applicant is over-assessed, the applicant is granted such reasonable abatement as the commissioners think proper. If the applicant has paid the tax, the applicant is reimbursed out of the municipal treasury, with costs in either case. If the applicant fails, the commissioners shall allow costs to the municipality, taxed as in a civil action in the Superior Court, and issue their warrant of distress against the applicant for collection of the amount due the municipality. The commissioners may require the assessors or municipal clerk to produce the valuation by which the assessment was made or a copy of it. Either party may appeal from the decision of the county commissioners to the Superior Court, in accordance with the Maine Rules of Civil Procedure, Rule 80B. If the county commissioners fail to give written notice of their decision within 60 days of the date the application is filed, unless the applicant agrees in writing to further delay, the application is deemed denied and the applicant may appeal to the Superior Court as if there had been a written denial.

Sec. 19. 36 MRSA §848-A, as amended by PL 1997, c. 526, §14, is further amended to read:

§848-A. Assessment ratio evidence

Reports of assessment ratios contained in assessment ratio studies of the Bureau of Revenue Services ~~shall be~~ are prima facie evidence of what the reported ratio is in fact, unless a party to ~~such~~ proceedings related to a protested assessment establishes that ~~such~~ the ratio was derived or established in a manner contrary to law or proves the ~~existance~~ existence of a different ratio.

In any proceedings relating to a protested assessment, it ~~shall be~~ is a sufficient defense of ~~such~~ the assessment that it is accurate within reasonable limits of practicality, except when a proven deviation of 10% or more from the relevant assessment ratio of the municipality or primary assessing area exists.

Sec. 20. 36 MRSA §1481, sub-§5, as amended by PL 1981, c. 706, §18, is further amended to read:

5. Vehicle. "Vehicle" means a motor vehicle, mobile home, camper trailer, heavier-than-air aircraft or lighter-than-air aircraft. "Vehicle" ~~shall~~ does not include any snowmobiles as defined in Title 12, section ~~1971~~ 7821.

Sec. 21. 36 MRSA §1752, sub-§17-A, ¶G, as repealed and replaced by PL 1999, c. 790, Pt. A, §42 and affected by §43, is amended to read:

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

Sec. 22. 36 MRSA §1752, sub-§17-A, ¶K, as enacted by PL 1999, c. 790, Pt. A, §46 and affected by §47, is amended to read:

K. Rental of furniture, audio tapes and audio equipment pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105.

Sec. 23. 36 MRSA §1760, sub-§54, as enacted by PL 1985, c. 819, Pt. A, §§42 and 43, is amended to read:

54. Food stamp and WIC purchases. Sales of items purchased with federal food stamps or Women, Infants and Children, WIC, Special Supplemental Food Program food instruments distributed by the Department of Human Services.

Sec. 24. 36 MRSA §2013, sub-§§2 and 3, as amended by PL 1999, c. 757, §1 and affected by §3, are further amended to read:

2. Refund authorized. Any person, association of persons, firm or corporation that purchases electricity, or that purchases or leases depreciable machinery or equipment, for use in commercial agricultural production, commercial fishing or commercial aquacultural production must be refunded the amount of sales tax paid upon presenting to the State Tax Assessor evidence that the purchase is eligible for refund under this section.

Evidence required by the assessor may include a copy or copies of that portion of the purchaser's or lessee's most recent filing under the United States Internal Revenue Code that indicates that the purchaser or lessee is engaged in commercial agricultural production, commercial fishing or commercial aquacultural production and that the purchased machinery or equipment is depreciable for those purposes or would be depreciable for those purposes if owned by the lessee.

In the event that any piece of machinery or equipment is only partially depreciable under the United States Internal Revenue Code, any reimbursement of the sales tax must be prorated accordingly. In the event that electricity is used in qualifying and nonqualifying activities, any reimbursement of the sales tax must be prorated accordingly.

Application for refunds must be filed with the assessor within 36 months of the date of purchase or execution of the lease.

3. Purchases made free of tax with certificate. Sales tax need not be paid on the purchase of electricity or of a single item of machinery or equipment if the purchaser has obtained a certificate from the assessor stating that the purchaser is engaged in commercial agricultural production, commercial fishing or commercial aquacultural production and authorizing the purchaser to purchase electricity or depreciable machinery and equipment without paying Maine sales tax. The seller is required to obtain a copy of the certificate together with an affidavit as prescribed by the assessor, to be maintained in the seller's records, attesting to the qualification of the purchase for exemption pursuant to this section. In order to qualify for this exemption, the electricity or depreciable machinery or equipment must be used directly in commercial agricultural production, commercial fishing or commercial aquacultural production. In order to qualify for this exemption, the electricity must be used in qualifying activities, including support operations.

Sec. 25. 36 MRSA §2524, sub-§2, ¶C, as enacted by PL 1999, c. 401, Pt. NNN, §1 and affected by §§8 and 9 and PL 2001, c. 358, Pt. D, §1, is amended to read:

C. "Quality child care services" has the meaning set forth in section 5219-Q, subsection 1.

Sec. 26. 36 MRSA §2524, sub-§4, as enacted by PL 1999, c. 401, Pt. NNN, §2 and affected by §§8 and 9 and PL 2001, c. 358, Pt. D, §1, is amended to read:

4. Quality child care services. The credit allowed under subsection 1 doubles in amount if the day care service provided by the taxpayer constitutes quality child care services.

Sec. 27. 36 MRSA §3202, sub-§§2-B and 2-C are enacted to read:

2-B. IFTA. "IFTA" means the International Fuel Tax Agreement administered by the International Fuel Tax Association, Inc., a nonprofit corporation organized under the laws of the State of Arizona.

2-C. IFTA governing documents. "IFTA governing documents" means the IFTA Articles of Agreement, the IFTA Audit Manual and the IFTA Procedures Manual.

Sec. 28. 36 MRSA §3203, sub-§1, as amended by PL 1999, c. 733, §4 and affected by §17, is further amended to read:

1. Generally. Except as provided in section 3204-A, an excise tax is levied and imposed on all suppliers of ~~special fuel~~ distillates sold, on all retailers of low-energy fuel sold and on all users of special fuel used in this State for each gallon of distillate at the rate of 23¢ per gallon and for each gallon of low-energy fuel based on the British Thermal Unit, referred to in this subsection as "BTU," energy content for each fuel as compared to gasoline. These values are as follows.

Fuel type	BTU content per gallon	Formula (BTU value fuel/ BTU value gasoline) x tax rate gasoline	Tax rate
Gasoline	115,000	100% x 22¢	22¢ per gallon as authorized in section 2903
Methanol (M85)	65,530	57% x 22¢	12.5¢ per gallon
Ethanol (E85)	81,850	71% x 22¢	15.6¢ per gallon
Propane	84,500	73% x 22¢	16¢ per gallon
Compressed Natural Gas	100,000 (BTU per 100 standard cubic feet)	87% x 22¢	19.1¢ per 100 standard cubic feet

Sec. 29. 36 MRSA §3205, as amended by PL 1999, c. 414, §30, is further amended to read:

§3205. Registered supplier

Every supplier of special fuel making sales only of dyed fuel or taxable ~~special fuel~~ distillates pursuant to section 3203 shall register with the State Tax Assessor on forms prescribed and supplied by the assessor. A copy of the registration certificate must be displayed in each place of business of that supplier.

Sec. 30. 36 MRSA §3209, as amended by PL 1999, c. 733, §§11 and 12 and affected by §17, is further amended to read:

§3209. Reports; International Fuel Tax Agreement; payment of tax; allowance for losses

1. Suppliers. Every licensed supplier shall file on or before the last day of each month a report with the ~~assessor~~ State Tax Assessor stating the gross gallons of ~~special fuel~~ distillates received, sold and used in this State by that supplier during the preceding calendar month, on a form prescribed and furnished by the assessor. The report must contain any further information reasonably required by the assessor. At the time of filing the report required by this subsection, each supplier must pay to the assessor a tax as prescribed in section 3203 upon each gallon reported as a taxable sale or as taxable gallons used.

1-A. Retailers. Every licensed retailer shall file on or before the last day of each month a report with the assessor stating the gross gallons of ~~special fuel~~ low-energy fuel received, sold and used in this State by that retailer during the preceding calendar month on a form prescribed and furnished by the assessor. The report must contain any further information reasonably required by the assessor. At the time of filing the report required by this subsection, each retailer shall pay to the assessor a tax as prescribed in section 3203 upon each gallon reported as a taxable sale or as taxable gallons used.

1-B. International Fuel Tax Agreement. The State Tax Assessor shall take all steps necessary to maintain the State's membership in the IFTA, in order to:

A. Facilitate the administration of this chapter;

B. Promote the fullest and most efficient possible use of the highway system; and

C. Make uniform the administration, collection and enforcement of special fuel use taxation laws with respect to motor vehicles operated in multiple jurisdictions, by ensuring this State's full participation in the single-base jurisdiction system embodied in the IFTA governing documents, agreed to by other IFTA member jurisdictions and approved by the United States Congress in the Intermodal Surface Transportation Efficiency Act of 1991.

The assessor is authorized to ratify amendments to the IFTA governing documents on behalf of this State, except that the assessor may not ratify any provision that infringes on the substantive taxation authority of the Legislature, including the power to impose taxes, set tax rates and determine exemptions. Subject to the provisions of this Title, the assessor may delegate to the Secretary of State the responsibility for the processing of special fuel tax returns, special fuel tax collection and compliance with IFTA administrative requirements. The assessor shall consult with the Secretary of State and the Commissioner of Public Safety with respect to rules adopted by the Secretary of State pertaining to IFTA.

2. Users generally. Except as provided by subsection 4, for the purpose of determining the amount of tax imposed, each user, not later than the last day of April, July, October and January of each year, shall file with the assessor a report that must include the total gallonage of fuels used within this State during the quarter ending the last day of the preceding month. The report must contain any further information reasonably required by the assessor. At the time of filing the report required by this subsection, each user shall pay to the assessor the tax imposed by section

3203 upon each gallon reported as a taxable use or as taxable gallons used, which has not been subjected to the special fuel tax.

3. Exempt users. Any user of special fuel operating exclusively within this State and using only special fuel purchased within this State upon which the State has received the special fuel tax, may be exempted, at the discretion of the assessor, from filing reports under this chapter. Any user of special fuel requesting exemption from filing reports shall file an affidavit as prescribed by the assessor.

4. Annual returns in certain circumstances. Notwithstanding any other provisions of this section, ~~when the annual tax liability is expected to be $100 or less,~~ a user~~, with the approval of the assessor,~~ may file an annual return with payment on or before January 31st of each year covering the prior year when the annual tax liability is expected to be $100 or less or when allowed by the IFTA governing documents.

5. Monthly reports from wholesalers. Each wholesaler shall submit on or before the last day of each month on a form prescribed and furnished by the assessor a report stating the number of gross gallons sold by that wholesaler to each supplier, importer, exporter or any other person that purchased special fuel from that wholesaler during the preceding month. The report must clearly identify each purchaser and indicate the number of gallons that each purchaser received from the wholesaler. The report must also contain any other information reasonably required by the assessor.

Sec. 31. 36 MRSA §4365, as amended by PL 1999, c. 414, §37, is further amended to read:

§4365. Rate of tax

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~~ 37 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 in any one month 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 against the purchaser by the State Tax Assessor within 3 years from the date of the purchase.

~~Beginning November 1, 1997, as a public health measure, the tax imposed under this section is 37 mills per cigarette.~~

Sec. 32. 36 MRSA §4373-A, sub-§2, as enacted by PL 1997, c. 458, §19, is amended to read:

2. Inspection and examination; penalty. The assessor or any authorized agent may enter into or upon any premises where there is reason to believe that cigarettes are possessed, stored or sold, and may examine the books, papers, records and cigarette stock of any distributor or dealer to determine compliance with the provisions of this chapter. Failure or refusal to permit an examination pursuant to this subsection is a civil violation for which a fine in the amount of $250 must be imposed, no part of which may be suspended.

Sec. 33. 36 MRSA c. 718, as amended, is repealed.

Sec. 34. 36 MRSA §5122, sub-§2, ¶M, as repealed and replaced by PL 2001, c. 358, Pt. CC, §2 and affected by §4, is amended to read:

M. An amount, for each recipient of benefits under an employee retirement plan, that is the lesser of:

(1) Six thousand dollars reduced by the total amount of the primary recipient's social security benefits and railroad retirement benefits paid by the United States, but not less than $0. The reduction does not apply to benefits paid under a military retirement plan; or

(2) The aggregate of benefits received by the primary recipient under employee retirement plans and included in federal adjusted gross income.

For purposes of this paragraph, "employee retirement plan" means a state, federal or military retirement plan or any other retirement benefit plan established and maintained by an employer for the benefit of its employees under Section 401(a), Section 403 or Section 457(b) of the Code. "Employee retirement plan" does not include an individual retirement account under Section 408 of the Code, a Roth IRA under Section 408A of the Code, a rollover individual retirement account, a simplified employee pension under Section 408(k) of the Code or an ineligible deferred compensation plan under Section 457(f) of the Code. For purposes of this paragraph, "military retirement plan" means benefits received as a result of service in the active or reserve components of the Army, Navy, Air Force, Marines or Coast Guard;

Sec. 35. 36 MRSA §5200, first ¶, as repealed and replaced by PL 1983, c. 477, Pt. F, sub-Pt. 3, §1, is amended to read:

A tax is imposed upon the Maine net income of taxable corporations for each taxable year at the following rates:

If the Maine net income is:	The tax is:
Not over $25,000	3.5% of Maine net income
$25,000 but not over $75,000	$875 plus 7.93% of excess over $25,000
$75,000 but not over $250,000	$4,840 plus 8.33% of excess over $75,000
$250,000 or more	~~$19,417~~ $19,418 plus 8.93% of excess over $250,000

Sec. 36. 36 MRSA §5217, sub-§2, ¶C, as enacted by PL 1999, c. 401, Pt. NNN, §3 and affected by §§8 and 9 and PL 2001, c. 358, Pt. D, §1, is amended to read:

C. "Quality child care services" has the meaning set forth in section 5219-Q, subsection 1.

Sec. 37. 36 MRSA §5217, sub-§4, as enacted by PL 1999, c. 401, Pt. NNN, §4 and affected by §§8 and 9 and PL 2001, c. 358, Pt. D, §1, is amended to read:

4. Quality child care services. The credit allowed under subsection 1 doubles in amount if the day care service provided by the taxpayer constitutes quality child care services.

Sec. 38. 36 MRSA §5218, as amended by PL 1999, c. 401, Pt. NNN, §5 and affected by §§8 and 9 and repealed and replaced by PL 1999, c. 521, Pt. B, §6 and affected by §11 and PL 2001, c. 358, Pt. D, §1, is repealed and the following enacted in its place:

§5218. Income tax credit for child care expenses

1. Resident taxpayer. A resident individual is allowed a credit against the tax otherwise due under this Part in the amount of 25% of the federal tax credit allowable for child and dependent care expenses in the same tax year.

2. Nonresident or part-year resident taxpayer. A nonresident or part-year resident individual is allowed a credit against the tax otherwise due under this Part in the amount of 25% of the federal tax credit allowable for child and dependent care expenses multiplied by the ratio of the individual's Maine adjusted gross income, as defined in section 5102, subsection 1-C, paragraph B, to the nonresident's entire federal adjusted gross income, as modified by section 5122.

3. Quality child care services. The credit provided by subsections 1 and 2 doubles in amount if the child care expenses were incurred through the use of quality child care services. As used in this section, unless the context otherwise indicates, "quality child care services" has the meaning set forth in section 5219-Q, subsection 1.

4. Refund. The credit allowed by this section may result in a refund of up to $500.

Sec. 39. 36 MRSA §5219-O, sub-§1, as amended by PL 1999, c. 414, §48, is further 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 with respect to the taxpayer's low-income employees under a health benefit plan during the taxable year for which the credit is allowed or $125 per low-income 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. 40. 36 MRSA §6201, sub-§2, as amended by PL 1999, c. 507, §1 and affected by §3, is further amended to read:

2. Claimant. "Claimant" means an individual who has filed a claim under this chapter and was domiciled in this State and occupied a homestead in this State during the entire calendar year preceding the year in which a claim for relief under this chapter is filed. "Claimant" also includes an individual who has filed a claim under this chapter and who was domiciled in this State and owned or otherwise maintained a homestead in this State during the entire calendar year preceding the year in which the claim for relief under this chapter is filed and occupied that homestead for at least 6 months during that year. Regardless of how many names of individuals appear on the property deed, the person who meets the qualifications described in this subsection and proves sole responsibility for the payment of the property taxes on the subject property is the claimant ~~for~~ with respect to that property. If 2 or more individuals meet the qualifications in this subsection and share the payment of the rent or the responsibility for the payment of the property taxes, each individual may apply on the basis of the rent paid or the property taxes levied on the homestead that reflect the ownership percentage of the claimant and the claimant's household.

If 2 or more individuals claim the same property, the matter must be referred to the State Tax Assessor, whose decision is final. Ownership of a homestead under this chapter may be by fee, by life tenancy, by bond for deed, as mortgagee or any other possessory interest in which the owner is personally responsible for the tax for which a refund is claimed.

Sec. 41. 36 MRSA §6201, sub-§12, as amended by PL 1997, c. 557, Pt. A, §1 and affected by Pt. G, §1, is further amended to read:

12. Year for which relief is requested. "Year for which relief is requested" means the calendar year preceding that in which the claim is filed. ~~For a claim filed in January of any year, "year for which relief is requested" means the calendar year 2 years preceding that in which the claim is filed.~~

Sec. 42. 36 MRSA §6204, as amended by PL 1997, c. 562, Pt. A, §1, is further amended to read:

§6204. Filing date

A claim may not be paid unless the claim is filed with the Bureau of Revenue Services on or after August 1st and on or before the following ~~January~~ December 31st.

Sec. 43. 36 MRSA §6651, sub-§1, as amended by PL 1997, c. 557, Pt. B, §11 and affected by Pt. G, §1, is further amended to read:

1. Eligible property. "Eligible property" means qualified business property first placed in service in the State, or constituting construction in progress commenced in the State, after April 1, 1995. "Eligible property" includes, without limitation, repair parts, replacement parts, additions, accessions and accessories to other qualified business property placed in service on or before April 1, 1995 if the part, addition, accession or accessory is first placed in service, or constitutes construction in progress, in the State after April 1, 1995. "Eligible property" also includes inventory parts. ~~"Eligible property" is subject to reimbursement pursuant to this chapter for up to 12 years, but the 12 years must be reduced by one year for each year during which a taxpayer included the same property in its investment credit base under section 5219-E or 5219-M and claimed the credit provided in either section on its income tax return.~~

Sec. 44. 36 MRSA §6651, sub-§3, as enacted by PL 1995, c. 368, Pt. FFF, §2, is amended to read:

3. Qualified business property. "Qualified business property" means tangible personal property that:

A. Is used or held for use exclusively for a business purpose by the person in possession of it or, in the case of construction in progress or inventory parts, is intended to be used exclusively for a business purpose by the person who will possess that property; and

B. Either:

(1) Was subject to an allowance for depreciation under the Code on April 1st of the property tax year to which the claim for reimbursement relates or would have been subject to an allowance for depreciation under the Code as of that date but for the fact that the property has been fully depreciated; or

(2) In the case of construction in progress or inventory parts, would be subject under the Code to an allowance for depreciation when placed in service or would have been subject to an allowance for depreciation under the Code as of that date but for the fact that the property has been fully depreciated.

"Qualified business property" also includes all property that is affixed or attached to a building or other real estate if it is used to further a particular trade or business activity taking place in that building or on that real estate. "Qualified business property" does not include components or attachments to a building if used primarily to serve the building as a building, regardless of the particular trade or activity taking place in or on the building. "Qualified business property" also does not include land improvements if used primarily to further the use of the land as land, regardless of the particular trade or business activities taking place in or on the land. In the case of construction in progress or inventory parts, the term "used" means intended to be used. "Qualified business property" also does not include any vehicle registered for on-road use on which a tax assessed pursuant to chapter 111 has been paid or any watercraft registered for use on state waters on which a tax assessed pursuant to chapter 112 has been paid.

Sec. 45. 36 MRSA §6652, sub-§1, as amended by PL 1997, c. 729, Pt. B, §1, is further amended to read:

1. Generally. A person against whom taxes have been assessed pursuant to Part 2, except for chapters 111 and 112, with respect to eligible property and who has paid those taxes is entitled to reimbursement of those taxes from the State as provided in this chapter. For purposes of this chapter, a tax applied as a credit against a tax assessed pursuant to chapter 111 or 112 is a tax assessed pursuant to chapter 111 or

112. Eligible property is subject to reimbursement pursuant to this chapter for up to 12 property tax years, but the 12 years must be reduced by one year for each year during which a taxpayer included the same property in its investment credit base under section 5219-D, 5219-E or 5219-M and claimed the credit provided in one or more of those sections on its income tax return, and reimbursement may not be made for taxes assessed in a year in which one or more of those credits is taken.

Sec. 46. 36 MRSA §6652, sub-§1-B, as enacted by PL 1997, c. 24, Pt. C, §14, is amended to read:

1-B. Certain property excluded. Notwithstanding any other provision of law, reimbursement pursuant to this chapter may not be made with respect to the following property:

A. Office furniture, including without limitation tables, chairs, desks, bookcases, filing cabinets and modular office partitions; and

B. Lamps and lighting fixtures.

This subsection applies to property tax years beginning after April 1, 1996. Property affected by this subsection that was eligible for reimbursement pursuant to chapter 915 of property taxes paid for the 1996 property tax year is grandfathered into the program and continues to be eligible for reimbursements for up to 12 property tax years, unless it subsequently becomes ineligible.

Sec. 47. 36 MRSA §6652, sub-§1-C, ¶¶B and C, as amended by PL 1999, c. 398, Pt. A, §103 and affected by §§104 and 105, are further amended to read:

B. Except as provided in paragraph C, reimbursement may not be made for property used to produce or transmit energy primarily for sale. Energy is primarily for sale if during the property tax year immediately preceding the property tax year for which a claim is being made 2/3 or more of the useful energy is directly or indirectly sold and transmitted ~~during the property tax year~~ through the facilities of a transmission and distribution utility as defined in Title 35-A, section 102, subsection 20-B.

C. A cogeneration facility is eligible for reimbursement on that portion of property taxes paid multiplied by a fraction, the numerator of which is the total amount of useful energy produced by the facility during the property tax year immediately preceding the property tax year for which a claim is being made that is directly used by a manufacturing facility without transmission over the facilities of a transmission and distribution utility as defined in Title 35-A, section 102, subsection 20-B and the denominator of which is the total amount of useful energy produced by the facility during the property tax year immediately preceding the property tax year for which a claim is being made.

Sec. 48. 36 MRSA §6658, as enacted by PL 1995, c. 368, Pt. FFF, §2 and amended by PL 1997, c. 526, §14, is further amended to read:

§6658. Subsequent changes

If, after a claim for reimbursement has been filed, the associated property tax assessment is reduced or abated for any reason, or the property tax paid is applied as a credit against the tax assessed pursuant to chapter 111 or 112, the claimant shall file, within 60 days after receipt of the reduction ~~or,~~ abatement or credit, an amended claim for reimbursement reflecting the reduction ~~or,~~ abatement or credit. If a claimant has received reimbursement for property tax that is reduced ~~or,~~ abated or credited against the tax assessed pursuant to chapter 111 or 112, the claimant shall, within 60 days of receipt of the reduction ~~or,~~ abatement or credit, refund to the Bureau of Revenue Services the amount of the reimbursement for the property tax that has been reduced ~~or,~~ abated or credited. If the claimant fails to make the refund within the 60-day period, the State Tax Assessor, within 3 years from the claimant's receipt of reimbursement, may issue an assessment for the amount that the claimant owes to the Bureau of Revenue Services. The claimant may seek reconsideration, pursuant to section 151, of the assessment.

Sec. 49. 36 MRSA §6661 is enacted to read:

§6661. Program name

The procedure for business property tax reimbursement provided by this chapter may be referred to as the "Business Equipment Tax Reimbursement" or "BETR" program.

Sec. 50. Application. That section of this Act that amends the Maine Revised Statutes, Title 36, section 5122, subsection 2, paragraph M applies to tax years beginning on or after January 1, 2001.

Sec. 51. Legislative intent. That section of this Act that repeals the Maine Revised Statutes, Title 36, chapter 718 is intended to recognize that the provisions of that chapter making the effectiveness of certain industry tax increases contingent upon a referendum of the affected taxpayers is in violation of the Maine Constitution. It is the further intent of the Legislature that Public Law 2001, chapter 147, increasing the tax on wild blueberries, take effect as provided in that Act without a referendum of the affected taxpayers.

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

Effective June 13, 2001.

CHAPTER 397

H.P. 1249 - L.D. 1697

An Act to Enhance the Safety and Health of Students in Public School Facilities

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

Sec. 1. 26 MRSA §565-B is enacted to read:

§565-B. Safety and health of students in public educational facilities

The board shall formulate and adopt reasonable rules to ensure safe and healthful conditions for students in public educational facilities. The rules must address safety and health hazards created by the use of or exposure to equipment or material or the exposure to other conditions within the educational facility that minors would be prohibited from using or being exposed to in a work environment. The rules may include, but are not limited to, regulations of equipment, material and conditions found in vocational or technical education, scientific laboratories and shop class.

The bureau shall enforce rules adopted under this section. The bureau may provide the same technical assistance to the governing boards of public educational facilities as it provides to employers pursuant to section 42-A and any other provision of this Title. Public educational facilities are subject to the same rights of access and the governing boards of such facilities are subject to the same penalties as employers pursuant to chapter 3.

Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

See title page for effective date.

CHAPTER 398

S.P. 550 - L.D. 1708

An Act to Streamline the Administration and Enforcement of the Work Permit Provisions of Child Labor Laws and to Enhance the Use of the Occupational Safety Loan Fund

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

PART A

Sec. A-1. 26 MRSA §775, as amended by PL 1993, c. 527, §1, is further amended to read:

§775. Work permits

1. Work permit authority. A minor under 16 years of age may not be employed without a work permit ~~issued to the minor~~ signed by the superintendent of schools of the school administrative unit in which the minor resides and issued to the minor by the bureau. The superintendent may designate a school official to ~~issue~~ sign a work permit and that official is directly responsible to the superintendent for this activity.

2. Conditions for signature. The superintendent shall ~~issue~~ sign a permit in the following circumstances:

A. If the school is in session or the minor is attending summer school, the minor must be enrolled in school, not habitually truant, not under suspension and passing a majority of courses during the current grading period. Upon request of the minor, the superintendent may waive the requirements for one grading period if, in the opinion of the superintendent, there are extenuating circumstances or if imposing the requirements would create an undue hardship for the minor;

B. If school is not in session, the minor must furnish to the superintendent a certificate signed by the principal of the school last attended showing that the minor has satisfactorily completed kindergarten to grade 8 in the public schools or their equivalent. If the certificate can not be obtained, the superintendent shall examine the minor to determine whether the minor meets these educational standards;

C. If the minor has been granted an exception to compulsory education under Title 20-A, section 5001-A, subsection 2, the minor must only submit proof of age as provided in subsection 3; or