

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTIETH LEGISLATURE**

**FIRST SPECIAL SESSION**  
**November 13, 2002 to November 14, 2002**

**ONE HUNDRED AND TWENTY-FIRST LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 4, 2002 to June 14, 2003**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**FEBRUARY 13, 2003**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 13, 2003**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2003**

gross income, as modified by section 5122. In no case may this credit reduce the Maine income tax to less than zero.

**Sec. 47. 36 MRSA §5219-A, sub-§3** is enacted to read:

**3. Part-year resident taxpayer.** An individual who files a return as a part-year resident in accordance with section 5224-A is allowed a credit against the tax otherwise due under this Part equal to 20% of any credit the individual received for the same taxable year under the Code, Section 22 multiplied by a ratio, the numerator of which is the individual's Maine adjusted gross income as defined in section 5102, subsection 1-C, paragraph A for that portion of the taxable year during which the individual was a resident plus the individual's Maine adjusted gross income as defined in section 5102, subsection 1-C, paragraph B for that portion of the taxable year during which the individual was a nonresident, and the denominator of which is the individual's entire federal adjusted gross income, as modified by section 5122. In no case may this credit reduce the Maine income tax to less than zero.

**Sec. 48. 36 MRSA §5219-N, sub-§§1 and 3**, as enacted by PL 1997, c. 557, Pt. E, §1 and affected by §2 and Pt. G, §1, are amended to read:

**1. Generally.** Except as ~~otherwise provided by this section in subsection 2~~, an individual whose state Maine taxable income determined as if the individual were a resident individual for the entire year is \$2,000 or less is allowed a credit equal to ~~the amount of~~ the tax otherwise imposed on that individual by this Part. In no case may ~~the this credit allowed by this section reduce an individual's state the Maine income tax liability~~ to less than zero.

**3. Returns not required.** Notwithstanding section 5220 or any other provision of law, an individual who is eligible for this credit is not required to file a state Maine income tax return.

**Sec. 49. 36 MRSA §5231, sub-§1**, as amended by PL 1989, c. 871, §19, is further amended to read:

**1. General.** The ~~assessor~~ State Tax Assessor may grant a reasonable extension of time for payment of tax or estimated tax or any installment, or for filing any return, declaration, statement or other document required pursuant to this Part, on terms and conditions the assessor may require. Except as provided in subsection 1-A or for a taxpayer who is outside the United States, an extension for filing any return, declaration, statement or document may not exceed 8 months.

**Sec. 50. 36 MRSA §5231, sub-§1-A**, as amended by PL 1997, c. 404, §9 and affected by §10, is further amended to read:

**1-A. Federal extension.** When an individual estate or trust is granted an extension of time within which to file a federal income tax return for any taxable year, the due date for filing the taxpayer's income tax return with respect to the tax imposed by this Part is automatically extended for an equivalent period. When a taxable corporation or a financial institution subject to the tax imposed by chapter 819 is granted an extension of time within which to file its federal income tax return for any taxable year, the due date for filing the taxpayer's income tax or franchise tax return with respect to the tax imposed by this Part is automatically extended for an equivalent period plus 30 days.

**Sec. 51. 36 MRSA §5316**, as amended by PL 1971, c. 622, §132, is repealed.

**Sec. 52. P&SL 1999, c. 53** is repealed.

**Sec. 53. Application.** Those sections of this Act that amend the Maine Revised Statutes, Title 36, section 5122, subsection 1, paragraph D and subsection 2, paragraph H and section 5200-A, subsection 1, paragraph B and subsection 2, paragraphs H and J apply to tax years beginning on or after January 1, 2002.

**Sec. 54. Application.** That section of this Act that repeals Private and Special Law 1999, chapter 53 applies to persons applying for participation in the elderly low-cost drug program after December 31, 2002.

**Sec. 55. Effective date.** That section of this Act that amends the Maine Revised Statutes, Title 36, section 191, subsection 2, paragraph R, as amended by Public Law 2001, chapter 714, Part CC, section 2, takes effect when the provisions in Public Law 2001, chapter 714, Part CC, section 8 are met.

See title page for effective date, unless otherwise indicated.

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## CHAPTER 391

H.P. 1075 - L.D. 1470

### An Act To Make Minor Substantive Changes to the Tax Laws

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

**Sec. 1. 36 MRSA §1861-A**, as amended by PL 2001, c. 583, §12, is further amended to read:

**§1861-A. Reporting use tax on individual income tax returns**

The assessor shall provide that individuals report use tax on items with a purchase price of \$5,000 or less on their Maine individual income tax returns. Taxpayers are required to attest to the amount of their use tax liability for the period of the tax return. Alternatively, they may elect to report an amount that is .04% of their Maine adjusted gross income. The table amount does not relate to items with a purchase price in excess of \$1,000. Liability arising from such items must be added to the table amount. Upon subsequent review, if use tax liability for the period of the return exceeds the amount of liability arising from the return, a credit of the amount of liability arising from the return is allowed subject to the limitation set out in this section. The credit is limited to the amount of liability arising from the return for items with a sale price of \$1,000 or less and may be applied only against a liability determined on review with regard to items with a sale price of \$1,000 or less. Use tax on any item with a purchase price of more than \$5,000 must be reported in accordance with section 1951-A.

**Sec. 2. 36 MRSA §4641, sub-§1-A, ¶¶A and B,** as enacted by PL 2001, c. 559, Pt. I, §1 and affected by §15, are amended to read:

A. In the case of a corporation, "controlling interest" means ~~either 50% or more than 50%~~ of the total combined voting power of all classes of stock of the corporation entitled to vote or ~~50% or more than 50%~~ of the capital, profits or beneficial interest in the voting stock of the corporation.

B. In the case of a partnership, association, trust or other entity, "controlling interest" means ~~50% or more than 50%~~ of the capital, profits or beneficial interest in the partnership, association, trust or other entity.

**Sec. 3. 36 MRSA §4641-D, 2nd ¶ from the end,** as amended by P&SL 1975, c. 78, §21, is further amended to read:

The register of deeds shall transmit both copies of the declaration of value to the State Tax Assessor not later than 40 days from the date of recordation of the deed subject to the tax or, in the case of a transfer of a controlling interest subject to tax under this chapter, no later than the 10th day of the month following the month in which the report of the transfer is received by the register of deeds.

**Sec. 4. 36 MRSA §4641-E, 2nd ¶,** as amended by PL 2001, c. 559, Pt. I, §11 and affected by §15, is further amended to read:

Within 3 years of the recording of a deed subject to the tax imposed by this chapter or of the date on which a transfer of a controlling interest in an entity subject to taxation under this chapter is reported to the register of deeds, the State Tax Assessor may examine any books, papers, records or memoranda of the grantor or grantee bearing upon the amount of tax payable, and may enforce that right of examination by subpoena. If the assessor determines that there is a deficiency of taxes due under this chapter, such deficiency must be assessed, together with interest and penalties, with notice to the persons liable, but no such assessment may be made more than 3 years after the date of recording or transfer.

**Sec. 5. 36 MRSA §5122, sub-§2, ¶M,** as amended by PL 2001, c. 396, §34 and affected by §50, is further amended to read:

M. ~~An amount, for~~ For each individual who is a primary recipient of benefits under an employee retirement plan, an amount that is the lesser of:

(1) Six thousand dollars reduced by the total amount of the ~~primary recipient's individual'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 the individual's federal adjusted gross income.

For purposes of this paragraph, the following terms have the following meanings. "Primary recipient" means the individual upon whose earnings the employee retirement plan benefits are based or the surviving spouse of that individual. "employee ~~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 the Code, Section 401(a), Section 403 or Section 457(b) of the Code, except that distributions made pursuant to a section 457(b) plan are not eligible for the deduction provided by this paragraph if they are made prior to age 55 and are not part of a series of substantially equal periodic payments made for the life of the primary recipient or the joint lives of the primary recipient and that recipient's designated beneficiary. "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 in-

eligible deferred compensation plan under Section 457(f) of the Code. Benefits under an employee retirement plan do not include distributions that are subject to the tax imposed by the Code, Section 72(t). ~~For purposes of this paragraph, "military~~ "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. 6. 36 MRSA §5142, sub-§1,** as amended by PL 1993, c. 478, §1, is further amended to read:

**1. General.** The Maine adjusted gross income of a nonresident individual derived from or connected with sources ~~within~~ in this State is the sum of the following:

A. The net amount of items of income, gain, loss, and deduction entering into the nonresident individual's federal adjusted gross income that are derived from or connected with sources in this State including (i) the ~~nonresident's~~ individual's distributive share of partnership or limited liability company income and deductions determined under section 5192, (ii) the ~~nonresident's~~ individual's share of estate or trust income and deductions determined under section 5176, and (iii) the ~~nonresident's distributive~~ individual's pro rata share of the income of an electing small business S corporation ~~for federal income tax purposes~~ derived from or connected with sources ~~within~~ in this State;

B. The portion of the modifications described in section 5122, subsections 1 and 2 that ~~relate~~ relates to income derived from or connected with sources in this State, including any modifications attributable to the nonresident individual as a partner of a partnership, shareholder of an S corporation, member of a limited liability company or beneficiary of an estate or trust; and

C. Proceeds from any Maine State Lottery or Tri-state Lotto tickets purchased in this State, including payments received from a 3rd party for the transfer of the rights to future proceeds related to any such tickets.

**Sec. 7. 36 MRSA §5215, sub-§3, ¶A,** as amended by PL 1997, c. 761, §3, is further amended to read:

A. With property considered to be qualified investment of at least \$5,000,000 for that taxable year with a situs in the State and placed in service by the taxpayer after January 1, 1979; and

**Sec. 8. 36 MRSA §5215, sub-§3, ¶B,** as amended by PL 1999, c. 708, §44, 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 most recent average per capita income annual wage in the labor market area in which the employee is employed; ~~and~~

**Sec. 9. 36 MRSA §5217-A,** as amended by PL 1991, c. 591, Pt. N, §16 and affected by §17, is further amended to read:

**§5217-A. Income tax paid to other taxing jurisdiction**

A resident individual is allowed a credit against the tax otherwise due under this Part, excluding the tax imposed by section 5203-A, for the amount of income tax imposed on that individual for the taxable year by another state of the United States, a political subdivision of any such state, the District of Columbia or any political subdivision of a foreign country that is analogous to a state of the United States with respect to income subject to tax under this Part that is derived from sources in that taxing jurisdiction also subject to tax under this Part. In determining whether income is derived from sources in another jurisdiction, the assessor may not employ the law of the other jurisdiction but shall instead assume that a statute equivalent to section 5142 applies in that jurisdiction. The credit, for any of the specified taxing jurisdictions, may not exceed the proportion of the tax otherwise due under this Part, excluding the tax imposed by section 5203-A, that the amount of the taxpayer's Maine adjusted gross income derived from sources in that taxing jurisdiction bears to the taxpayer's entire Maine adjusted gross income; ~~provided~~ except that, when a credit is claimed for taxes paid to both a state and a

political subdivision of a state, the total credit allowable for those taxes does not exceed the proportion of the tax otherwise due under this Part, excluding the tax imposed by section 5203-A, that the amount of the taxpayer's Maine adjusted gross income derived from sources in the other state bears to the taxpayer's entire Maine adjusted gross income.

**Sec. 10. 36 MRSA §5218**, as amended by PL 2003, c. 20, Pt. FF, §1, is further amended to read:

**§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, except that for tax years beginning in 2003, 2004 and 2005, the applicable percentage is 21.5% instead of 25%.

**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 individual's~~ entire federal adjusted gross income, as modified by section 5122, except that for tax years beginning in 2003, 2004 and 2005, the applicable percentage is 21.5% instead of 25%.

**2-A. Part-year resident taxpayer.** An individual who files a return as a part-year resident in accordance with section 5224-A 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 a ratio, the numerator of which is the individual's Maine adjusted gross income as defined in section 5102, subsection 1-C, paragraph A for that portion of the taxable year during which the individual was a resident plus the individual's Maine adjusted gross income as defined in section 5102, subsection 1-C, paragraph B for that portion of the taxable year during which the individual was a nonresident and the denominator of which is the individual's entire federal adjusted gross income, as modified by section 5122.

**3. Quality child care services.** The credit provided by subsections 1 ~~and 2~~ and 2-A 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 as defined in section 5219-Q, subsection 1.~~

**4. Refund.** The credit allowed by this section may result in a refund of up to \$500. In the case of a

nonresident individual, the refundable portion of the credit may not exceed \$500 multiplied by the ratio of the individual's Maine adjusted gross income, as defined in section 5102, subsection 1-C, paragraph B, to the individual's entire federal adjusted gross income, as modified by section 5122. In the case of an individual who files a return as a part-year resident in accordance with section 5224-A, the refundable portion of the credit may not exceed \$500 multiplied by a ratio, the numerator of which is the individual's Maine adjusted gross income as defined in section 5102, subsection 1-C, paragraph A for that portion of the taxable year during which the individual was a resident plus the individual's Maine adjusted gross income as defined in section 5102, subsection 1-C, paragraph B for that portion of the taxable year during which the individual was a nonresident and the denominator of which is the individual's entire federal adjusted gross income, as modified by section 5122.

**Sec. 11. 36 MRSA §5220, sub-§§3 and 4**, as enacted by P&SL 1969, c. 154, §F, §1, are amended to read:

**3. Resident estates or trusts.** Every resident estate or trust ~~which is required to file a federal income tax return.~~ that has for the taxable year:

A. Any Maine taxable income as defined in section 5163; or

B. Gross income of \$10,000 or more, regardless of the amount of Maine taxable income;

**4. Certain nonresident estates or trusts.** Every nonresident estate or trust ~~which that has for the taxable year has from sources within this State;~~

A. Any Maine taxable income; as determined under section 5175, subsection 2; or

B. Gross income of \$600 \$10,000 or more, regardless of the amount of Maine taxable income;

**Sec. 12. 36 MRSA §6652, sub-§1**, as amended by PL 2001, c. 396, §45, 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. A successor in interest of a person against whom taxes have been assessed with respect to eligible property is entitled to reimbursement pursuant to this section, whether the tax was paid by the person assessed or by the successor, as long as a transfer of the property in question to the successor has occurred and the successor is the owner of the property as of August 1st, of the year in which a claim for reimbursement may be filed pursuant to section 6654. For purposes of this paragraph, "successor in interest" includes the initial successor and any subsequent successor. When an eligible successor in interest exists, the successor is the only person to whom reimbursement under this chapter may be made with respect to the transferred property.

**Sec. 13. 36 MRSA §6753, sub-§12,** as amended by PL 1999, c. 388, §2, is further amended to read:

**12. Qualified employees.** "Qualified employees" means new, full-time employees hired in this State by a qualified business and for whom a retirement program subject to the Employee Retirement Income Security Act of 1974, 29 United States Code, Sections 101 to 1461, as amended, and group health insurance are provided, and whose income derived from employment with the applicant, calculated on a calendar year basis is greater than the most recent average annual per capita income wage in the county in which the qualified employee is employed and whose state income withholding taxes are subject to reimbursement to the qualified business under this chapter. "Qualified employees" must be residents of this State.

**Sec. 14. Application.** That section of this Act that amends the Maine Revised Statutes, Title 36, section 5220, subsections 3 and 4 applies to tax years beginning on or after January 1, 2003.

See title page for effective date.

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**CHAPTER 392**

**S.P. 541 - L.D. 1582**

**An Act To Protect Critical Homeland Security Information and Information Technology Infrastructure and Systems**

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

**Sec. 1. 1 MRSA §402, sub-§3, ¶K,** as amended by PL 2001, c. 675, §2, is further amended to read:

K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or non-mandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A; ~~and~~

**Sec. 2. 1 MRSA §402, sub-§3, ¶L,** as enacted by PL 2001, c. 675, §3, is amended to read:

L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure; and

**Sec. 3. 1 MRSA §402, sub-§3, ¶M** is enacted to read:

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure and systems. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure.

See title page for effective date.

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