

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

FIRST REGULAR SESSION
December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2005

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FIRST SPECIAL SESSION
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SEPTEMBER 17, 2005

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

Penmor Lithographers
Lewiston, Maine
2005

D. Boards of visitors shall meet regularly and at least 4 times a year. At each meeting, a board of visitors may request and must receive information from the chief administrative officer as the board determines will assist in the review of the management of the facility. To the extent that a board of visitors is not discussing matters made confidential by federal or state law, meetings of boards are public proceedings and must be conducted in accordance with Title 1, section 403. Boards of visitors may meet jointly.

E. Each board of visitors shall share copies of that board's annual report with the other boards.

3. Visit to correctional facilities and communications with clients and staff. A member of a board of visitors may visit the correctional facility to which that board is assigned and may speak with clients and with staff. The member shall comply with all departmental policies and procedures and facility security practices regarding access to the correctional facility, shall adhere to all federal and state law regarding confidentiality and shall refer concerns or complaints regarding specific individuals to the chief administrative officer or advocate.

4. Volunteer activities. Volunteer activities of a member of a board of visitors may be prescribed by departmental policies regarding volunteer activities generally.

Sec. 2. Staggered terms. Notwithstanding the Maine Revised Statutes, Title 34-A, section 3002, the terms of members of boards of visitors appointed pursuant to Title 34-A, section 3002 during the first year following the effective date of this Act must be staggered and be for 1, 2 or 3 years.

Sec. 3. Application. Notwithstanding the Maine Revised Statutes, Title 34-A, section 3002, subsection 1, paragraph C, a current member of a board of visitors who is an employee of the Department of Corrections may continue to serve on a board until March 15, 2006 or until a new member is appointed, whichever is sooner.

See title page for effective date.

CHAPTER 217

S.P. 203 - L.D. 648

**An Act To Exempt Maine
Agricultural Fairs from the
Requirements of the Site Location of
Development Laws**

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

Sec. 1. 38 MRSA §488, sub-§23 is enacted to read:

23. Agricultural fair property. Development on property that is used for one or more agricultural fairs licensed by the Commissioner of Agriculture, Food and Rural Resources under Title 7, chapter 3 is exempt from review under this article if:

A. The property is not used for motorized vehicle racing for more than 14 days beyond those days authorized for the operation of the agricultural fair;

B. Motorized vehicle racing on the property is licensed by the Department of Public Safety;

C. Use of the property beyond those days authorized for the operation of the agricultural fair meets a noise standard pursuant to section 484, subsection 3. The department shall enforce the noise standard under this paragraph; and

D. The property has been identified as the location of an agricultural fair in an agricultural fair license issued by the Department of Agriculture, Food and Rural Resources prior to September 15, 2006.

Sec. 2. Environmental evaluation checklist. The Department of Agriculture, Food and Rural Resources, in consultation with the Department of Environmental Protection, shall develop a checklist of environmental issues that may have an impact on agricultural fair property and distribute the checklist to each person, agricultural society, association or corporation that submits an application to hold, conduct or operate an agricultural fair licensed under the Maine Revised Statutes, Title 7, chapter 3. The person, agricultural society, association or corporation shall, with the assistance of a soil and water conservation district, complete the checklist and submit it to the Department of Agriculture, Food and Rural Resources. The Department of Agriculture, Food and Rural Resources may not issue a license for an agricultural fair prior to receipt of the environmental checklist.

See title page for effective date.

CHAPTER 218

H.P. 1087 - L.D. 1546

**An Act Concerning Technical
Changes to the Tax Laws**

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

Sec. 1. 4 MRSA §807-A, 2nd ¶, as amended by PL 1987, c. 497, §1 and PL 1997, c. 526, §14, is further amended to read:

Upon promulgation of and in accordance with rules adopted by the Supreme Judicial Court, employees of the Department of Administrative and Financial Services, Bureau of Revenue Services may serve civil process and represent the bureau in District Court in disclosure proceedings pursuant to Title 14, chapter 502, ancillary to the collection of taxes for which warrants have been issued pursuant to Title 36, and may represent the State Tax Assessor in arraignment proceedings in District Court in cases in which a criminal complaint has been filed alleging violation of Title 36, section 2113-~~3234~~ or 5332.

Sec. 2. 5 MRSA §931, sub-§1, ¶L-2, as amended by PL 1999, c. 784, §2, is further amended to read:

L-2. The Director of Econometric Research within the Bureau of ~~Taxation~~ Revenue Services;

Sec. 3. 30-A MRSA §421, sub-§12, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

12. Service of tax warrant. For the ~~services~~ service of a ~~sales or use tax warrant and arrest~~ as provided by Title 36, section 173, the same as for service of civil process, ~~and for civil arrests~~. For collecting ~~sales or use taxes, penalties and interest;~~ under such warrants, for every dollar of the first \$100, 4¢; for every dollar above \$100 and not exceeding \$200, 3¢; and for every dollar above \$200, 2¢. Additional services, including travel, ~~shall~~ must be charged as provided in this section;

Sec. 4. 30-A MRSA §421, sub-§13, as amended by PL 1989, c. 502, Pt. A, §112, is repealed.

Sec. 5. 30-A MRSA §421, next to the last ¶, as amended by PL 2003, c. 86, §1, is further amended to read:

The county commissioners of each county may require that the fees collected under subsections 1, 2, 3, 5, 7, 12, ~~13~~ and 14 be increased by \$5, except that the fee paid by any state agency or department may only be increased by \$1. The sheriff or deputy shall collect this additional amount and pay it to the county treasurer for the use and benefit of the county. The county commissioners may also require that the fees collected under subsections 1 to 14 be increased by an amount equal to the cost of social security and other withholding taxes on the fees payable under this section.

Sec. 6. 36 MRSA §176-A, sub-§3, ¶C, as amended by PL 2001, c. 583, §6, is further amended to read:

C. Any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the assessor:

(1) Is liable in person and estate to the State in a sum equal to the value of the property not so surrendered, but not exceeding the amount of taxes for the collection of which the levy has been made, together with costs and ~~interests~~ interest at the rate determined pursuant to section 186 on the sum from the date of the levy. Any amount, other than costs, recovered under this paragraph must be credited against the tax liability for the collection of which the levy was made; and

(2) Without reasonable cause, is liable for a penalty equal to 50% of the amount recoverable under subparagraph (1). A part of the penalty may not be credited against the tax liability for the collection of which the levy was made.

It is lawful for the assessor to collect the liability ~~as determined~~ established by this paragraph by ~~levy upon the person's property in accordance with the provisions of this section~~ assessment and collection in the manner described in this Part.

Sec. 7. 36 MRSA §178 is enacted to read:

§178. Priority of tax

Whenever the estate of a deceased person liable for any tax is insufficient to pay all the debts owed by the decedent or whenever the estate and effects of an absconding, concealed or absent person liable for any tax are levied upon by process of law, the tax, together with interest attaching thereto, must be first settled. This section may not be construed to give the State a preference over any recorded lien that attached prior to the date when the tax became due.

Sec. 8. 36 MRSA §200, sub-§1, as amended by PL 2001, c. 652, §6, is further amended to read:

1. Impact of taxes on individuals. The bureau shall submit to the joint standing committee of the Legislature having jurisdiction over taxation matters and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs a report containing the information required by this subsection by July 1, 1999 and by ~~October~~ January 1st of each ~~even-numbered~~ odd-numbered year thereafter.

A. Part 1 of the report must describe the overall incidence of all state, local and county taxes. The report must present information on the distribution of the tax burden:

- (1) For the overall income distribution, using a measure of system-wide incidence that appropriately measures equality and inequality;
- (2) By income classes, including, at a minimum, deciles of the income distribution; and
- (3) By other appropriate taxpayer characteristics.

B. Part 2 of the report must describe the impact of the tax system on business and industrial sectors. The report must:

- (1) Describe the impact of taxes on major sectors of the business and industrial economy relative to other sectors; and
- (2) Describe the relative impact of each tax on business and industrial sectors.

C. When determining the overall incidence of taxes under this subsection, the bureau shall reduce the amount of taxes collected by the amount of taxes that are returned directly to taxpayers through tax relief programs.

Sec. 9. 36 MRSA §707, sub-§2 is amended to read:

2. Property of veterans. The value of the real property of veterans, their widows, widowers and minor children not taxed;

Sec. 10. 36 MRSA §841, sub-§4, as repealed and replaced by PL 1979, c. 73, is amended to read:

4. Veteran's widow or widower or minor child. Notwithstanding failure to comply with section 706 or section 1181, the assessors, on written application within one year from the date of commitment, may make such abatement as they think proper in the case of the unremarried widow or widower or the minor child of a veteran, which if the widow, widower or child would be entitled to an exemption under section 653, subsection 1, paragraph D, except for her or his failure to make application and file proof within the time set by section 653, subsection 1, paragraph G, provided that the veteran died during the 12-month period preceding the April 1st for which the tax was committed.

Sec. 11. 36 MRSA §1752, sub-§1-B, as amended by PL 1995, c. 281, §11 and affected by §42, is further amended to read:

1-B. Automobile. "Automobile," for purposes of subsection 47-A, ~~paragraph H~~ **17-B**, means a self-propelled 4-wheel motor vehicle designed primarily to carry passengers and not designed to run on tracks.

Sec. 12. 36 MRSA §1752, sub-§1-D, as amended by PL 1989, c. 847, §1, is further amended to read:

1-D. Casual sale. "Casual sale" means an isolated transaction in which tangible personal property or a taxable service is sold other than in the ordinary course of repeated and successive transactions of like character by the person making the sale. "Casual sales sale" ~~include~~ includes transactions at a bazaar, fair, rummage sale, picnic or similar event by a civic, religious or fraternal organization ~~which that~~ that is not a registered retailer at a bazaar, fair, rummage sale, picnic or similar event. The sale by a registered retailer of tangible personal property ~~which that~~ that that retailer has used in the course of the retailer's business is not a "~~casual sale~~" casual sale if that property is of like character to that sold by the retailer in the ordinary course of repeated and successive transactions. "Casual sale" does not include any transaction in which a retailer sells tangible personal property ~~is sold by a representative for the owner's account when that representative is a registered retailer and the registered retailer shall have the same duties respecting any such transaction as if the representative had sold on the representative's own account or a taxable service on behalf of the owner of that property or the provider of that service.~~

Sec. 13. 36 MRSA §1752, sub-§7-C, as enacted by PL 1987, c. 343, §3, is amended to read:

7-C. Nonprofit. "Nonprofit" ~~means~~ refers to an organization which has been determined by the United States Internal Revenue Service to be exempt from taxation under ~~the United States Internal Revenue Code~~, Section 501(c) of the Code.

Sec. 14. 36 MRSA §1752, sub-§11, ¶A, as amended by PL 2003, c. 588, §3, is further amended to read:

A. "Retail sale" includes:

(1) Conditional sales, installment lease sales and any other transfer of tangible personal property when the title is retained as security for the payment of the purchase price and is intended to be transferred later; and

(2) Sale of products for internal human consumption to a person for resale through ~~coin-operated~~ vending machines when sold to a person more than 50% of whose gross receipts from the retail sale of tangible per-

sonal property are derived from sales through vending machines. The tax must be paid by the retailer to the State.

Sec. 15. 36 MRSA §1752, sub-§11, ¶B, as amended by PL 2005, c. 12, Pt. TTT, §1 and affected by §4, is further amended to read:

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 media and audio or video equipment, of audio or video media 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 or satellite television services, of associated equipment for rental or lease to subscribers in conjunction with a sale of extended cable or extended satellite television services; or
- (7) The sale, to a person engaged in the business of renting furniture, or audio media and audio equipment, of furniture, audio media or audio equipment for rental pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105.

Sec. 16. 36 MRSA §1752, sub-§15, as amended by PL 1999, c. 521, Pt. A, §5 and affected by §11, is further amended to read:

15. Storage. "Storage" includes any keeping or retention in this State of tangible personal property ~~purchased at retail sale.~~

Sec. 17. 36 MRSA §1752, sub-§21, as amended by PL 1965, c. 361, is further amended to read:

21. Use. "Use" includes the exercise in this State of any right or power over tangible personal property incident to its ownership ~~when purchased by the user at retail sale~~, including the derivation of income, whether received in money or in the form of other benefits, by a lessor from the rental of tangible personal property located in this State.

Sec. 18. 36 MRSA §1754-B, sub-§1, ¶D, as enacted by PL 1995, c. 640, §3, is amended to read:

D. Every ~~consignee, agent or salesperson~~ person that makes retail sales in this State of tangible personal property or taxable services on behalf of a principal that is outside of this State if the principal is not the holder of a valid registration certificate;

Sec. 19. 36 MRSA §1754-B, sub-§1, ¶F, as amended by PL 2005, c. 12, Pt. O, §2 and affected by §5, is further amended to read:

F. Every person that manages or operates in the regular course of business or on a casual basis a hotel, rooming house or tourist or trailer camp in this State or that collects or receives rents from a hotel, rooming house or tourist or trailer camp in this State; ~~and~~

Sec. 20. 36 MRSA §1754-B, sub-§1, ¶G, as amended by PL 1997, c. 504, §8, is further amended to read:

G. Every seller of tangible personal property or taxable services that has a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution. The following activities do not constitute a substantial physical presence for the purpose of this paragraph:

- (1) Solicitation of business in this State through catalogs, flyers, telephone or electronic media when delivery of ordered goods is effected by the United States mail or by an interstate 3rd-party common carrier;
- (2) Attending trade shows, seminars or conventions in this State;
- (3) Holding a meeting of a corporate board of directors or shareholders or holding a company retreat or recreational event in this State;
- (4) Maintaining a bank account or banking relationship in this State; or

(5) Using a vendor in this State for printing, drop shipping or telemarketing services; ~~and~~

Sec. 21. 36 MRSA §1754-B, sub-§1, ¶H is enacted to read:

H. Every person that makes retail sales in this State of tangible personal property or taxable services on behalf of the owner of that property or the provider of those services.

Sec. 22. 36 MRSA §1760, sub-§25, as amended by PL 1999, c. 708, §27 and affected by §52, is further amended to read:

25. Watercraft sold to nonresidents. Sales of watercraft ~~in this State~~ to a nonresident, when ~~such craft the watercraft is either delivered outside the State or delivered in the State~~ intended to be sailed or transported outside the State immediately upon delivery by the seller; sales to a nonresident, under contracts for the construction of ~~any such a~~ watercraft intended to be ~~so delivered~~ sailed or transported outside the State immediately upon delivery by the seller, of materials to be incorporated in the watercraft; and sales to a nonresident for the repair, alteration, refitting, reconstruction, overhaul or restoration of ~~any such a~~ watercraft intended to be ~~so delivered~~ sailed or transported outside the State immediately upon delivery by the seller, of materials to be incorporated in the watercraft. Unless the 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. 23. 36 MRSA §1760, sub-§34, as repealed and replaced by PL 1981, c. 163, §4, is amended to read:

34. Sales through vending machines. Sales of products for internal human consumption when sold through ~~coin-operated~~ vending machines by a person more than 50% of whose gross receipts from the retail sale of tangible personal property are derived from sales through vending machines.

Sec. 24. 36 MRSA §1760, sub-§45, as amended by PL 1999, c. 708, §29, is further amended to read:

45. Certain property purchased outside State. Sales of property purchased and used by the present owner outside the State:

A. If the property is an automobile, as defined in Title 29-A, section 101, subsection 7, and if the owner was, at the time of purchase, a resident of the other state and either employed or registered to vote there;

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~~

A-2. If the property is a snowmobile or all-terrain vehicle as defined in Title 12, section 13001 and the purchaser is not a resident of the State; or

B. For more than 12 months in all other cases.

~~For purposes of this subsection, "use" does not include storage, but means actual utilization of the property for a purpose consistent with its design.~~ Property, other than automobiles, watercraft, snowmobiles and all-terrain vehicles, that is required to be registered for use in this State does not qualify for this exemption unless it was registered by its present owner outside this State more than 12 months prior to its registration in this State. If property required to be registered for use in this State was not required to be registered for use outside this State, the owner must be able to document actual use of the property outside this State for more than 12 months prior to its registration in this State. For purposes of this subsection, "use" does not include storage but means actual use of the property for a purpose consistent with its design.

Sec. 25. 36 MRSA §1764, as amended by PL 2005, c. 12, Pt. O, §3 and affected by §5, is further amended to read:

§1764. Tax against certain casual sales

The tax imposed by chapters 211 to 225 must be levied upon all casual rentals of living quarters in a hotel, rooming house or tourist or trailer camp and upon all casual sales involving the sale of camper trailers, truck campers, motor vehicles, special mobile equipment except farm tractors and lumber harvesting vehicles or loaders, livestock trailers, watercraft or aircraft except those sold for resale at retail sale or to a corporation, partnership, limited liability company or limited liability partnership when the seller is the owner of a majority of the common stock of the corporation or of the ownership interests in the partnership, limited liability company or limited

liability partnership. This section does not apply to the rental of living quarters ~~when that rental is rented for a total of fewer than 15 days each in the calendar year, except that a person who owns and offers for rental more than one property in the State during the calendar year is liable for collecting sales tax with respect to the rental of each unit regardless of the number of days for which it is rented.~~

Sec. 26. 36 MRSA §1952-A, as amended by PL 2003, c. 414, Pt. B, §64 and affected by c. 614, §9, is further amended to read:

§1952-A. Payment of tax on vehicles and recreational vehicles

The tax imposed by ~~chapters 211 to 225 this Part~~ on the sale or use of any vehicle, snowmobile, all-terrain vehicle or watercraft must, except where the dealer ~~of the vehicle or watercraft~~ has collected the tax in full, be paid by the purchaser or other person seeking registration of the vehicle, snowmobile, all-terrain vehicle or watercraft at the time and place of registration ~~of the vehicle or watercraft~~. In the case of vehicles ~~except snowmobiles and all-terrain vehicles~~, the tax must be collected by the Secretary of State and transmitted to the Treasurer of State as provided by Title 29-A, section 409. In the case of watercraft, snowmobiles and all-terrain vehicles, the tax must be collected by the Commissioner of Inland Fisheries and Wildlife and transmitted to the Treasurer of State as provided by Title 12, sections 13002 to 13005.

Sec. 27. 36 MRSA §1953, as amended by PL 1979, c. 541, Pt. B, §46, is further amended to read:

§1953. Tax a debt; recovery; preference

The taxes, interest and penalties imposed by chapters 7 and 211 to 225, from the time ~~the same shall be they are due, shall be~~ are a personal debt of the retailer or user to the State of Maine, recoverable in any court of competent jurisdiction in a civil action in the name of the State of Maine, ~~and shall have preference in any distribution of the assets of the taxpayer, whether in bankruptcy, insolvency or otherwise. The proceeds of any judgment obtained shall be paid to the Tax Assessor.~~

Sec. 28. 36 MRSA §1964 is repealed.

Sec. 29. 36 MRSA §2011, as amended by PL 1987, c. 772, §25, is further amended to read:

§2011. Overpayment; refunds

If the State Tax Assessor determines, upon written application by a taxpayer or during the course of an audit, that any tax under this Part has been paid more than once or has been erroneously or illegally collected or computed, ~~he~~ the assessor shall certify to

the State Controller the amount ~~collected paid~~ in excess of that legally due, ~~from whom it was collected or by whom paid, and that. That amount shall must~~ be credited by the ~~State Tax Assessor assessor~~ on any taxes then due from the taxpayer and the balance refunded to the taxpayer or ~~his~~ the taxpayer's successor, administrators, executors or assigns in interest, but no such credit or refund may be allowed unless within 3 years from the date of overpayment either a written petition therefor, stating the grounds upon which the refund or credit is claimed, is filed with the State Tax Assessor assessor or the overpayment is discovered on audit within 3 years of the date of overpayment. Interest, at the rate determined pursuant to section 186, ~~shall must~~ be paid on any balance refunded pursuant to this chapter from the date the return listing the overpayment was filed; or the date the payment was made, whichever is later, on any balance refunded pursuant to this chapter, except that no interest may be paid with respect to the refunds provided by section 2013 and, in cases of excessive or erroneous collections ~~specified in section 1814~~, interest ~~shall must~~ be paid in accordance with section 1814, subsection 3. At the election of the ~~State Tax Assessor assessor~~, unless the taxpayer specifically requests a cash refund, the refund may be credited to the taxpayer's sales and use tax account, but, in the case of a credit, no further interest may accrue from the date of that election. ~~Nothing may authorize the The taxpayer, or anyone acting in his behalf, to may not~~ apply for a refund of any amount assessed when administrative and judicial review under section 151 has been completed.

~~Any A~~ taxpayer dissatisfied with the decision of the ~~State Tax Assessor assessor~~, upon a written request for refund filed under this section, may request reconsideration and appeal ~~therefrom from the reconsideration~~ to the Superior Court in the same manner and under the same conditions as in the case of assessments made under ~~chapters chapter 7 and 211 to 225~~. The decision of the ~~State Tax Assessor assessor~~ upon ~~such a~~ written request for refund ~~shall become becomes~~ final as to law and fact in the same manner and under the same conditions as in the case of assessments made under ~~chapters chapter 7 and 211 to 225~~.

Sec. 30. 36 MRSA §2513, first ¶, as amended by PL 2003, c. 20, Pt. CC, §1 and affected by §3, is further amended to read:

Every insurance company or association that does business or collects premiums or assessments including annuity considerations in the State, ~~except those mentioned in section 2517~~, including surety companies and companies engaged in the business of credit insurance or title insurance, shall, for the privilege of doing business in this State, and in addition to any other taxes imposed for such privilege pay a tax upon all gross direct premiums including

annuity considerations, whether in cash or otherwise, on contracts written on risks located or resident in the State for insurance of life, annuity, fire, casualty and other risks at the rate of 2% a year. Every surplus lines insurer that does business or collects premiums in the State shall, for the privilege of doing business in this State, and in addition to any other taxes imposed for such privilege, pay a tax upon all gross direct premiums, whether in cash or otherwise, on contracts written on risks located or resident in the State at the rate of 3% a year. The tax must be paid by the insurer's licensed producer with surplus lines authority pursuant to Title 24-A, section 2016. For purposes of this section, the term "annuity considerations" includes amounts paid to an insurance company when received for the purchase of a contract that may result in an annuity, even when the annuitization never occurs or does not occur until some time in the future and the amounts are in the meantime applied to an investment vehicle other than an annuity. This section does not apply to mutual fire insurance companies under section 2517 or to captive insurance companies incorporated under the laws of another state.

Sec. 31. 36 MRSA §2521-A, first ¶, as amended by PL 1997, c. 435, §5, is further amended to read:

Every insurance company, captive insurance company, association, producer or attorney-in-fact of a reciprocal insurer subject to tax as imposed by this chapter shall on or before the last day of each April, the 25th day of each June and the last day of each October file with the State Tax Assessor on forms prescribed by the State Tax Assessor a return for the quarter ending the last day of the preceding month, except for the month of June, which is for the quarter ending June 30th. These returns may be on an estimated basis, as long as each April and June installment equals at least 35% of the total tax paid for the preceding calendar year or 35% of the total tax to be paid for the current calendar year. The remaining installments must equal 15% of the total tax to be paid for the preceding calendar year or 15% of the total tax to be paid for the current year. An authorized company official shall affirm which elective is selected. Such elective can not be changed during the current calendar year. The final return must be filed on or before March 15th covering the prior calendar year.

Sec. 32. 36 MRSA §2551, sub-§6, as enacted by PL 2003, c. 673, Pt. V, §25 and affected by §29, is amended to read:

6. Mobile telecommunications services. "Mobile telecommunications services" means commercial mobile radio service as defined in 47 Code of Federal Regulations, Section 20.3 as in effect on ~~July~~ June 1, 1999. For purposes of sourcing, "mobile telecommunications services" does not include air-ground

radiotelephone service as defined in 47 Code of Federal Regulations, Section 22.99 as in effect on June 1, 1999.

Sec. 33. 36 MRSA §2551, sub-§7-A is enacted to read:

7-A. Nonprofit. "Nonprofit" refers to an organization that has been determined by the United States Internal Revenue Service to be exempt from taxation under Section 501(c) of the Code.

Sec. 34. 36 MRSA §2553, sub-§§3 and 4, as enacted by PL 2003, c. 673, Pt. V, §25 and affected by §29, are amended to read:

3. Making sales after revocation. A person whose service provider tax registration certificate has been revoked by the assessor pursuant to this section and who continues to make ~~retail~~ sales in this State of one or more of the services identified in section 2552 commits a Class D crime. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

4. Failure to register. A person who is required by this section to register as a service provider with the assessor and who makes ~~retail~~ sales in this State of one or more of the services identified in section 2552 without being so registered commits a Class E crime. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

Sec. 35. 36 MRSA §2557, sub-§§29 and 30, as enacted by PL 2003, c. 673, Pt. V, §25 and affected by §29, are amended to read:

29. Centers for innovation. Sales to centers for innovation as described in Title 5, section 13141; ~~and~~

30. Sales for resale. Sales of services to another service provider for resale; ~~and~~

Sec. 36. 36 MRSA §2557, sub-§31 is enacted to read:

31. Construction contracts with exempt organizations. Sales to a construction contractor or its subcontractor of fabrication services that are to be physically incorporated in, and become a permanent part of, real property for sale to any organization or government agency provided exemption under this section, except as otherwise provided.

Sec. 37. 36 MRSA §3234, as amended by PL 1995, c. 271, §12, is repealed.

Sec. 38. 36 MRSA §3235, as amended by PL 2003, c. 390, §19, is further amended to read:

§3235. Tax a debt; recovery

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

Sec. 39. 36 MRSA §3240, as amended by PL 1985, c. 127, §1, is repealed.

Sec. 40. 36 MRSA §4062, sub-§4, as enacted by PL 1981, c. 451, §7, is repealed.

Sec. 41. 36 MRSA §4062, sub-§7, as enacted by PL 1981, c. 451, §7, is amended to read:

7. Transfer. "Transfer" includes the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment in the manner described in this chapter.

Sec. 42. 36 MRSA §4064, first ¶, as amended by PL 2005, c. 12, Pt. M, §1 and affected by §2, is further amended to read:

A tax is imposed upon the transfer of real property and tangible personal property situated in this State and held by an individual who dies prior to January 1, 2002 or after December 31, 2002 and who at the time of death was not a resident of this State. When real or tangible personal property has been transferred into a trust or a limited liability company or other pass-through entity, the tax imposed by this section applies as if the trust or limited liability company or other pass-through entity did not exist and the property was personally owned by the decedent. Maine property is subject to the tax imposed by this section to the extent that such property is included in the decedent's federal gross estate. The amount of this tax is a sum equal to that proportion of the federal credit that the value of the decedent's Maine real and tangible personal property ~~taxed~~ in this State ~~that qualifies for the credit~~ bears to the value of the decedent's federal gross estate. All property values under this section are as finally determined for federal estate tax purposes, except that for estates of decedents dying after December 31, 2002 that do not incur a federal estate tax, all property values are as finally determined by the assessor in accordance with the Code as if the estate had incurred a federal estate tax. The share of the federal credit used to determine the amount of a nonresident individual's estate tax under this section is computed without regard to whether the

specific real or tangible personal property located in the State is marital deduction property.

Sec. 43. 36 MRSA §4068, as amended by PL 2005, c. 12, Pt. N, §3 and affected by §4, is further amended to read:

§4068. Tax due date; filing of return and payment of tax

1. Date due. ~~The tax imposed by this chapter~~ Except as otherwise provided by this chapter, a return required by this section is due 9 months after the date of the decedent's death ~~and any tax due under this chapter is due at the same time.~~ Interest ~~shall accrue~~ accrues on any amount of tax not paid by ~~that~~ the due date.

2. Return required. ~~In all cases where there is a Maine estate tax liability, the~~ The personal representative shall ~~pay the tax imposed by this chapter and file a Maine estate tax return within 9 months after the decedent's death. The return must be in the form prescribed by the State Tax Assessor and it must be accompanied by a copy of the federal estate tax return, if any, and other supporting documentation that the assessor may require, whenever:~~

A. The Code requires that a federal estate tax return be filed; or

B. The federal gross estate, increased by the amount of adjusted taxable gifts made by the decedent after December 31, 1976 and by the aggregate amount of any specific gift tax exemption under former Code, Section 2521 used by the decedent after September 8, 1976 exceed the exclusion and related unified credit amounts specified in section 4062, subsection 1-A.

The return must be in the form prescribed by the State Tax Assessor and it must be accompanied by a copy of the federal estate tax return, if any, and by other supporting documentation that the assessor may require.

3. No tax liability. ~~In all cases where there is no a Maine estate tax liability~~ return is not required to be filed:

A. If the personal representative makes no election pursuant to section 4062, subsection 2-B, the personal representative, surviving joint tenant of real estate or any other person whose real estate might be subject to a lien for taxes pursuant to this chapter may at any time file with the assessor in the form prescribed by the assessor a statement of the value of the federal gross estate; and

B. If the personal representative makes an election pursuant to section 4062, subsection 2-B, the personal representative shall make such election on a timely filed return. The return must be in the form prescribed by the assessor and it must be accompanied by a copy of the federal estate tax return, if any, and other supporting documentation that the assessor may require, including documentation related to an election made pursuant to section 4062, subsection 2-B.

Sec. 44. 36 MRSA §4365, as amended by PL 2003, c. 705, §6, 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 47 50 mills for each cigarette. Payment of the tax is evidenced by the affixing of stamps to the packages containing the cigarettes.

Sec. 45. 36 MRSA §4365-E, sub-§§1 to 3, as enacted by PL 2001, c. 439, Pt. SSSS, §2, are amended to read:

1. Stamped rate. Cigarettes stamped at the rate of 37 mills per cigarette and held for resale after September 30, 2001 are subject to tax at the rate of 47 50 mills per cigarette.

2. Liability. A person possessing cigarettes for resale is liable for the difference between the tax rate of 47 50 mills per cigarette and the tax rate of 37 mills per cigarette in effect before October 1, 2001. Stamps indicating payment of the tax imposed by this section must be affixed to all packages of cigarettes held for resale as of October 1, 2001, except that cigarettes held in vending machines as of that date do not require that stamp.

3. Vending machines. Notwithstanding any other provision of this chapter, it is presumed that all cigarette vending machines are filled to capacity on October 1, 2001 and that the tax imposed by this section must be reported on that basis. A credit against this inventory tax must be allowed for cigarettes stamped at the rate of 47 50 mills per cigarette placed in vending machines before October 1, 2001.

Sec. 46. 36 MRSA §4366-A, sub-§2, ¶¶B and C, as enacted by PL 2001, c. 439, Pt. SSSS, §3, are amended to read:

B. For stamps at the face value of 47 50 mills sold prior to July 1, 2002, 2.16%; and

C. For stamps at the face value of 47 50 mills sold on or after July 1, 2002, 2.03%.

Sec. 47. 36 MRSA §4366-D, as enacted by PL 2001, c. 450, Pt. D, §1, is repealed.

Sec. 48. 36 MRSA §4403, sub-§§1 and 2, as amended by PL 1989, c. 588, Pt. D, §4, are further amended to read:

1. Smokeless tobacco. A tax is imposed on all smokeless tobacco, including chewing tobacco and snuff, at the rate of ~~50% of the wholesale sales price beginning October 1, 1989; 55% of the wholesale sales price beginning January 1, 1991; and 62% of the wholesale sales price beginning July 1, 1991.~~

2. Other tobacco. A tax is imposed on cigars, pipe tobacco and other tobacco intended for smoking at the rate of ~~13% of the wholesale sales price beginning October 1, 1989; 14% of the wholesale sales price beginning January 1, 1991; and 16% of the wholesale sales price beginning July 1, 1991.~~

Sec. 49. 36 MRSA §4641-H, as enacted by PL 1975, c. 572, §1 and amended by P&SL 1975, c. 78, §21, is repealed.

Sec. 50. 36 MRSA §4641-I, as amended by PL 1981, c. 364, §61, is repealed.

Sec. 51. 36 MRSA §5122, sub-§1, ¶N, as amended by PL 2005, c. 12, Pt. P, §2 and affected by §10, is further amended to read:

N. With respect to property placed in service during the taxable year, an amount equal to the net increase in depreciation or expensing attributable to:

(1) For taxable years beginning on or after January 1, 2002 but prior to January 1, 2006, a 30% bonus depreciation deduction claimed by the taxpayer pursuant to Section 101 of the federal Job Creation and Worker Assistance Act of 2002, Public Law 107-147 with respect to property placed in service during the taxable year;

(2) For taxable years beginning on or after January 1, 2002 but prior to January 1, 2006, a 50% bonus depreciation deduction claimed by the taxpayer pursuant to Section 201 of the federal Jobs and Growth Tax Relief Reconciliation Act of 2003, Public Law 108-27 with respect to property placed in service during the taxable year; and

(3) For taxable years beginning on or after January 1, 2003 but prior to January 1, 2008, the increase in aggregate cost ~~claimed~~ used under Section 179 of the Code pursuant to Section 202 of the federal Jobs and Growth Tax Relief Reconciliation Act of

2003, Public Law 108-27 or pursuant to Section 201 of the federal American Jobs Creation Act of 2004, Public Law 108-357;

Sec. 52. 36 MRSA §5122, sub-§2, ¶B, as amended by PL 2003, c. 705, §10 and affected by §14, is further amended to read:

B. An amount equal to the reduction in salaries and wages expense for federal income tax purposes associated with the taxpayer's federal work opportunity credit as determined under the Code, Section 51 or empowerment zone employment credit as determined under the Code, Section 1396;

Sec. 53. 36 MRSA §5122, sub-§2, ¶M, as amended by PL 2003, c. 391, §5, is further amended to read:

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

(1) Six thousand dollars reduced by the total amount of the 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 pension benefits under employee retirement plans 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. "Pension benefits" means employee retirement plan benefits reported as pension or annuity income for federal income tax purposes. "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), except that distributions made pursuant to a ~~section~~ 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 ineligible deferred compensation plan under Section 457(f) of the Code. ~~Benefits~~ Pension benefits under an employee retirement plan do not include distributions that are subject to the tax imposed by the Code, Section 72(t). "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. 54. 36 MRSA §5200-A, sub-§1, ¶N, as amended by PL 2005, c. 12, Pt. P, §7 and affected by §10, is further amended to read:

N. With respect to property placed in service during the taxable year, an amount equal to the net increase in depreciation or expensing attributable to:

(1) For taxable years beginning on or after January 1, 2002 but prior to January 1, 2006, a 30% bonus depreciation deduction claimed by the taxpayer pursuant to Section 101 of the federal Job Creation and Worker Assistance Act of 2002, Public Law 107-147 with respect to property placed in service during the taxable year;

(2) For taxable years beginning on or after January 1, 2002 but prior to January 1, 2006, a 50% bonus depreciation deduction claimed by the taxpayer pursuant to Section 201 of the federal Jobs and Growth Tax Relief Reconciliation Act of 2003, Public Law 108-27 with respect to property placed in service during the taxable year; and

(3) For taxable years beginning on or after January 1, 2003 but prior to January 1, 2008, the increase in aggregate cost ~~claimed~~ used under Section 179 of the Code pursuant to Section 202 of the federal Jobs and Growth Tax Relief Reconciliation Act of 2003, Public Law 108-27 or pursuant to Section 201 of the federal American Jobs Creation Act of 2004, Public Law 108-357;

Sec. 55. 36 MRSA §5200-A, sub-§2, ¶C, as amended by PL 2003, c. 705, §13 and affected by §14, is further amended to read:

C. An amount equal to the reduction in salaries and wages expense for federal income tax purposes associated with the taxpayer's federal work opportunity credit as determined under the Code, Section 51 or empowerment zone employment credit as determined under the Code, Section 1396;

Sec. 56. 36 MRSA §5200-A, sub-§2, ¶H, as amended by PL 2003, c. 390, §44 and affected by §53, is further amended to read:

H. For each taxable year subsequent to the year of the loss, an amount equal to the absolute value of the net operating loss arising from tax years beginning on or after January 1, 1989 but before January 1, 1993 and the absolute value of the amount of any net operating loss arising from tax years beginning on or after January 1, 2002, for which federal adjusted gross income was increased under subsection 1, paragraph H and that, pursuant to the Code, Section 172, was carried back for federal income tax purposes, less the absolute value of loss used in the taxable year of loss to offset any addition modification required by subsection 1, but only to the extent that:

- (1) Maine taxable income is not reduced below zero;
- (2) The taxable year is within the allowable federal period for carry-over; and
- (3) The amount has not been previously used as a modification pursuant to this subsection;

Sec. 57. 36 MRSA §5278, sub-§5, ¶B, as amended by PL 1989, c. 530, §3, is further amended to read:

B. If the claim for credit or refund relates to an overpayment attributable to a net operating loss carry-back arising from a tax year beginning before January 1, 2002 or a credit carry-back, the claim may be made, under regulations prescribed rules adopted by the assessor, within the period which that ends with the expiration of the 15th day of the 40th month following the end of the taxable year of the net operating loss or the unused credit which that resulted in such the carry-back or the period prescribed in subsection 3 in respect of such that taxable year, whichever expires later or, with. With respect to any portion of a credit carry-back from a taxable year that is attributable to a net operating loss carry-back or a capital loss carry-back from a subsequent taxable year, the period within which the claim may be made shall be that period which ends with the expiration of the 15th day of the 40th month following the end of such the subsequent taxable year or the period prescribed in subsection 3 in respect of such that taxable year, whichever expires later.

Sec. 58. 36 MRSA §6201, sub-§12, as amended by PL 2001, c. 396, §41, 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 during January to May of any year, or during the extension period allowed under section 6215, "year for which relief is requested" means the calendar year 2 years preceding that in which the claim is filed.

Sec. 59. 36 MRSA §6210, as amended by PL 1997, c. 557, Pt. A, §4 and affected by Pt. G, §1, is further amended to read:

§6210. Administration

The State Tax Assessor shall make available suitable forms with instructions for claimants. The claim shall must be in the form prescribed by the State Tax Assessor ~~may prescribe~~ assessor and shall must be signed by the claimant.

The ~~State Tax Assessor~~ assessor shall include a checkoff to request an application for the Maine Residents Property Tax Program on the individual income tax form. The assessor shall also provide ~~for~~ the a paperless option of for filing an application for the Maine Residents Property Tax Program ~~using the telefile system established by the assessor.~~

Sec. 60. 36 MRSA §6215, as amended by PL 1999, c. 708, §50, is further amended to read:

§6215. Extension of time for filing claims

In case of sickness, absence or other disability, or if, in the judgment of the State Tax Assessor, good cause exists, the assessor may extend, for a period not to exceed 6 2 months, the time for filing a claim. A request for an extension may be submitted at any time during the ~~6-month~~ 2-month extension period.

Sec. 61. 36 MRSA §6652, sub-§1-B, ¶C, as enacted by PL 2003, c. 625, §2 and affected by §3 and enacted by c. 687, Pt. A, §11 and affected by Pt. B, §11, is repealed and the following enacted in its place:

C. Gambling machines or devices, including any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any gambling activity as that term is defined in Title 8, section 1001, subsection 15, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. "Gambling machines or devices" includes, without limitation:

- (1) Associated equipment as defined in Title 8, section 1001, subsection 2;
- (2) Computer equipment used directly and primarily in the operation of a slot machine

as defined in Title 8, section 1001, subsection 39;

(3) An electronic video machine as defined in Title 17, section 330, subsection 1-A;

(4) Equipment used in the playing phases of lottery schemes; and

(5) Repair and replacement parts of a gambling machine or device.

Sec. 62. P&SL 1999, c. 39, §1 is repealed.

Sec. 63. Application. That section of this Act that amends the Maine Revised Statutes, Title 36, section 5278, subsection 5, paragraph B applies retroactively to tax years beginning on or after January 1, 2002. That section of this Act that repeals and replaces Title 36, section 6652, subsection 1-B, paragraph C applies retroactively to property tax years beginning on or after April 1, 2004.

See title page for effective date.

CHAPTER 219

S.P. 542 - L.D. 1558

An Act Concerning Storm Water Management

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

Sec. 1. 38 MRSA §413, sub-§1-A, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §28, is further amended to read:

1-A. License required for surface wastewater disposal systems. No person may install, operate or maintain a surface wastewater disposal system without first obtaining a license therefor from the department, except that the department may exempt or license by rule categories of storm water discharges to groundwater when the discharges will not have a significant adverse effect on the quality or classification of waters of the State. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A unless the rules are incorporated as amendments to existing rules that are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 38 MRSA §413, sub-§1-B, ¶B, as enacted by PL 2003, c. 551, §5, is amended to read:

B. The department may exempt or license by rule license categories of subsurface discharges when the discharges will not have a significant adverse effect on the quality or classification of

groundwaters of the State to groundwater in the same manner and using the same criteria as provided in subsection 1-A. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A unless the rules are incorporated as amendments to existing rules that are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 3. 38 MRSA §420-D, first ¶, as amended by PL 2001, c. 232, §13, is further amended to read:

A person may not construct, or cause to be constructed, a project that includes 20,000 square feet or more of impervious area or 5 acres one acre or more of disturbed area in the direct watershed of a body of water most at risk from new development or one acre or more of impervious area or 5 acres or more of disturbed area in any other area without prior approval from the department. A person proposing a project shall apply to the department for a permit using an application provided by the department and may not begin construction until approval is received. This section applies to a project or any portion of a project that is located within an organized area of this State.

Sec. 4. 38 MRSA §420-D, sub-§1, as enacted by PL 1995, c. 704, Pt. B, §2 and affected by PL 1997, c. 603, §§8 and 9, is amended to read:

1. Standards. The department shall adopt rules specifying quantity and quality standards for storm water. Storm water quality standards for projects with 3 acres or less of impervious surface may address phosphorus, nitrates and suspended solids but may not directly address other dissolved or hazardous materials unless infiltration is proposed. Storm water quality standards apply only in the direct watersheds of waterbodies most at risk from development and in sensitive or threatened geographic regions or watersheds defined by the department under subsection 4. Until such regions are defined, storm water quality standards are not required to be met by a permit applicant.

Sec. 5. 38 MRSA §420-D, sub-§7, ¶D, as enacted by PL 1995, c. 704, Pt. B, §2 and affected by PL 1997, c. 603, §§8 and 9, is repealed.

Sec. 6. 38 MRSA §420-D, sub-§10, as amended by PL 1997, c. 502, §3 and affected by c. 603, §§8 and 9, is repealed.

Sec. 7. 38 MRSA §420-D, sub-§§12 and 13 are enacted to read:

12. Fees. An applicant for a permit under this section shall pay a fee to the department as follows.