

# 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**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 17, 2005**

**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**  
**2005**

tion, that governmental entity shall reimburse the first governmental entity 40% of the training costs.

E. If the officer is hired by the other governmental entity during the 5th year after graduation, that governmental entity shall reimburse the first governmental entity 20% of the training costs.

F. If the officer graduated more than 5 years before subsequently being hired by the other governmental entity, that governmental entity ~~shall~~ is not be obligated to reimburse the first governmental entity.

If the officer is subsequently hired by additional governmental entities within 5 years of graduation from the academy, each of those governmental entities ~~shall be~~ is liable to the governmental employer immediately preceding it for the training costs paid by that governmental entity under this subsection. The extent of financial liability ~~shall~~ must be determined according to the formula established by this subsection.

Reimbursement ~~shall~~ is not be required when the trained officer hired by a governmental entity has had employment with a prior governmental entity terminated at the discretion of the governmental entity.

**Sec. 33. Retroactivity.** That section of this Act that amends the Maine Revised Statutes, Title 25, section 2803-B, subsection 3 applies retroactively to January 1, 2005.

See title page for effective date.

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## CHAPTER 332

H.P. 1024 - L.D. 1462

### 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. 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 a provision of Title 36, section 2113, 3234 or 5332.

**Sec. 2. 5 MRSA §12004-K, sub-§11-A**, as enacted by PL 1997, c. 411, §1, is repealed.

**Sec. 3. 36 MRSA §111, sub-§5**, as amended by PL 1997, c. 668, §8, is further amended to read:

**5. Tax.** "Tax" means the total amount required to be paid, withheld and paid over, or collected and paid over with respect to estimated or actual tax liability under this Title and any amount assessed by the State Tax Assessor pursuant to this Title, including any interest or ~~civil penalty relating thereto~~ penalties provided by law. For purposes of sections 171, 175-A, 176-A and 186, "tax" also means any fee, fine, penalty or other obligation owed to the State provided for by law if this obligation is subject to collection by the assessor pursuant to an agreement entered into by the bureau and another agency of the State.

**Sec. 4. 36 MRSA §187-B, sub-§5-B** is enacted to read:

**5-B. Electronic data submission.** Any person required by the State Tax Assessor to file returns by electronic data submission that fails to file electronically is liable for a penalty of \$50. For purposes of this subsection, a person fails to file electronically when:

A. Two or more required returns in any consecutive 6-month period either are not filed or are filed by the person by means other than electronic data submission and the person has been notified in writing by the State Tax Assessor of that person's noncompliance and of the fact that the penalty authorized by this subsection may be imposed; or

B. The person files 2 or more required electronic returns in any consecutive 6-month period that do not comply with the specifications set forth in rules adopted by the State Tax Assessor pursuant to section 193.

**Sec. 5. 36 MRSA §187-B, sub-§7**, as amended by PL 2001, c. 396, §10, 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; subsections 4-A ~~and~~ 5-A ~~and~~ 5-B; 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. 6. 36 MRSA §191, sub-§2, ¶R**, as corrected by RR 2003, c. 2, §114, is amended to read:

R. The disclosure to the Department of Health and Human Services of information relating to the administration and collection of the ~~tax~~ taxes imposed by chapter 358, chapter 373 ~~and~~, chapter 375 and chapter 377;

**Sec. 7. 36 MRSA §191, sub-§2, ¶BB**, as amended by PL 2003, c. 668, §9 and affected by §12 and amended by c. 689, Pt. B, §6, is further amended to read:

BB. The disclosure to an authorized representative of the Department of Health and Human Services, Office of ~~Head Start and Child Care~~ and Head Start of taxpayer information directly relating to the certification of investments eligible for or the eligibility of a taxpayer for the quality child care investment credit provided by section 5219-Q; ~~and~~

**Sec. 8. 36 MRSA §191, sub-§2, ¶CC**, as enacted by PL 2003, c. 668, §10 and affected by §12, is amended to read:

CC. The disclosure to an authorized representative of the Department of Professional and Financial Regulation of information necessary for the administration of Title 10, chapter 222;

**Sec. 9. 36 MRSA §191, sub-§2, ¶DD to GG** are enacted to read:

DD. The delivery of a certified copy of any return, report or other information provided or filed pursuant to this Title by a partnership, corporation, trust or estate or any report of any examination of a return filed by a partnership, corporation, trust or estate to any person:

(1) Who signed the return;

(2) Who is the personal representative or executor of the estate filing the return;

(3) Who was a member of the partnership filing the return during any part of the period covered by the return;

(4) Who is a trustee of the trust filing the return;

(5) Who was a shareholder during any part of the period covered by the return filed by an S corporation;

(6) Who is an officer, or a bona fide shareholder of record owning 1% or more of the outstanding stock, of the corporation filing the return;

(7) Who is the person authorized to act for the corporation if the corporation has been dissolved; or

(8) Who is the duly authorized representative of any of the persons described in subparagraphs (1) to (7).

The exception under this paragraph does not include the disclosure of confidential information of a particular partner, shareholder, beneficiary or trustee or other person receiving income from one of the entities described in subparagraphs (1) to (8) unless otherwise authorized;

EE. The disclosure by the State Tax Assessor of the fact that a person has or has not been issued a provisional resale certificate pursuant to section 1754-B, subsection 2-B or a resale certificate pursuant to section 1754-B, subsection 2-C;

FF. The disclosure to the Department of the Secretary of State, Bureau of Motor Vehicles of whether the person seeking registration of a vehicle has paid the tax imposed by Part 3 with respect to that vehicle; and

GG. The disclosure to the Department of Inland Fisheries and Wildlife, Bureau of Administrative Services of whether the person seeking registration of a snowmobile, all-terrain vehicle or watercraft has paid the tax imposed by Part 3 with respect to that snowmobile, all-terrain vehicle or watercraft.

**Sec. 10. 36 MRSA §193**, as amended by PL 1999, c. 708, §18, is repealed and the following enacted in its place:

**§193. Returns; declaration covering perjury; submission of returns and funds by electronic means**

**1. Declaration required.** Any return, report or other document required to be filed pursuant to this Title must contain a declaration, in a form prescribed by the State Tax Assessor, that the statements contained in the return, report or other document are true and are made under the penalties of perjury. When a tax return is filed electronically by a taxpayer or with the taxpayer's permission, the filing of that return constitutes a sworn statement by the taxpayer, made under the penalties of perjury, that the tax liability shown on the return is correct.

**2. Electronic filing.** The State Tax Assessor may allow or, as provided in this subsection, require the filing of a return or document by electronic data submission or by telephone.

A. In the case of an employer that submits returns in accordance with section 5253 with respect to 100 or more employees, whether the returns are submitted directly by the employer or by a 3rd party on behalf of the employer, the assessor may require that the returns be filed by electronic data submission.

B. In the case of a payroll processor as defined in Title 10, chapter 222 that submits returns pursuant to section 5253 or Title 26, chapter 13, subchapter 7 for 100 or more employers, the assessor may require that the returns be filed by electronic data submission.

**3. Payment by electronic funds transfer.** The State Tax Assessor may allow or, as provided in this subsection, require the payment of a tax or the refund of a tax by electronic funds transfer. An electronic funds transfer allowed or required by the assessor pursuant to this subsection is considered a return. For the purposes of this subsection, "tax" includes unemployment insurance contributions required to be paid to the State pursuant to Title 26.

A. In the case of a person that is liable for \$200,000 or more per year pursuant to section 5253 or for \$400,000 or more per year in pay-

ments of any other single tax type, the assessor may require payment or refund of that tax by electronic funds transfer.

B. In the case of a payroll processor as defined in Title 10, chapter 222, the assessor may require payment or refund of taxes pursuant to section 5253 and unemployment insurance contributions pursuant to Title 26, chapter 13, subchapter 7 by electronic funds transfer.

**4. Adoption of rules.** The State Tax Assessor may adopt rules to establish procedures necessary to implement the provisions of this section and shall adopt rules in the event that payment of taxes by electronic funds transfer is mandated. Rules adopted pursuant to this subsection are routine technical rules for the purposes of Title 5, chapter 375, subchapter 2-A.

**Sec. 11. 36 MRSA §208-A, sub-§1**, as enacted by PL 1997, c. 688, §1, is amended to read:

**1. Request for adjustment.** A municipality that has experienced a sudden and severe disruption in its municipal valuation may request an adjustment to the equalized valuation determined by the State Tax Assessor under section 208. A municipality requesting an adjustment under this section must file a petition, with supporting documentation, with the State Tax Assessor by the August 1st preceding the October 1st when municipalities are notified within 45 days following receipt of the annual notice of the proposed valuations of municipalities within each county as required under section 208.

**Sec. 12. 36 MRSA §505, sub-§4**, as amended by PL 2001, c. 635, §1, is further amended to read:

**4. When interest collected.** The date or dates from and after which interest must accrue, which must also be the date or dates on which taxes become delinquent. The rate of interest must be specified in the vote and must apply to delinquent taxes committed during the taxable year until those taxes are paid in full. Except as provided in subsection 4-A, the maximum rate of interest must be established by the Treasurer of State and may not exceed the highest conventional rate of interest charged for commercial unsecured loans by Maine banking institutions on the first business day of the calendar year the vote is taken. The highest conventional rate of interest charged for commercial unsecured loans by Maine banking institutions on the first business day of each calendar year must be determined by the prime rate as published in the Wall Street Journal on the first business day of the calendar year, rounded up to the next whole percent plus 3 percentage points. The Treasurer of State, who shall send a written notice of

that rate of interest on or before January 20th of each year to the chief municipal officer of each municipality. The interest must be added to and become part of the taxes.

**Sec. 13. 36 MRSA §1752, sub-§9-B**, as amended by PL 1997, c. 557, Pt. D, §1 and affected by §4 and Pt. G, §1, is further amended to read:

**9-B. Production.** "Production" means an operation or integrated series of operations engaged in as a business or segment of a business that transforms or converts personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed. "Production" includes film production.

"Production" includes manufacturing, processing, assembling and fabricating operations that meet the definitional requisites, including biological processes that are part of an integrated process of manufacturing organisms or microorganic materials through the application of biotechnology.

"Production" does not include biological processes except as otherwise provided by this subsection, wood harvesting operations, the severance of sand, gravel, oil, gas or other natural resources produced or severed from the soil or water, or activities such as cooking or preparing drinks, meals, food or food products by a retailer for retail sale. ~~The foregoing are examples of activities that are not included within the term "production."~~

**Sec. 14. 36 MRSA §1811-B**, as enacted by PL 2003, c. 673, Pt. AAA, §3, is amended to read:

**§1811-B. Credit for tax paid on purchases for resale**

A retailer registered under section 1754-B may claim a credit for sales tax imposed by ~~chapters 211 to 225~~ this Part if the retailer has paid the sales tax on ~~an~~ item that it subsequently resells tangible personal property purchased for resale at retail sale. The credit may be claimed only on the return ~~on which the sale of the item is reported that corresponds to the period in which the tax was paid.~~ The credit must be claimed on a return filed within 5 years from the date on which the retailer purchased the item and may not be claimed if the item was used has been withdrawn from inventory by the retailer for the retailer's own use prior to its sale. If the retailer purchases an item for resale at retail sale and pays tax to its vendor and if the retailer's sales and use tax liability for the tax period in question is less than the credit being claimed, the retailer is entitled either to carry the credit forward or to receive a refund of the tax paid.

**Sec. 15. 36 MRSA §2551, sub-§12**, as enacted by PL 2003, c. 673, Pt. V, §25 and affected by §29, is amended to read:

**12. Production.** "Production" means an operation or integrated series of operations engaged in as a business or segment of a business that transforms or converts personal property by physical, chemical or other means into a form, composition or character different from that in which it originally existed. "Production" includes film production. "Production" includes manufacturing, processing, assembling and fabricating operations that meet the definitional requisites, including biological processes that are part of an integrated process of manufacturing organisms or microorganic materials through the application of biotechnology. "Production" does not include biological processes except as otherwise provided by this subsection, wood harvesting operations, the severance of sand, gravel, oil, gas or other natural resources produced or severed from the soil or water, or activities such as cooking or preparing drinks, meals, food or food products by a retailer for retail sale.

**Sec. 16. 36 MRSA §2908**, as repealed and replaced by PL 1987, c. 402, Pt. A, §183, is repealed and the following enacted in its place:

**§2908. Refund of tax in certain cases; time limit**

A person who purchases and uses internal combustion engine fuel for any commercial use other than in the operation of a registered motor vehicle on the highways of this State or, except as provided in section 2910, in the operation of an aircraft and who has paid the tax imposed by this chapter on that fuel is entitled to reimbursement in the amount of the tax paid, less 1¢ per gallon, upon presenting to the State Tax Assessor a sworn statement accompanied by the original invoices or other evidence as the assessor may require. The statement must show the total amount of internal combustion engine fuel so purchased and used by that person for a commercial use other than in the operation of registered motor vehicles on the highways of this State or in the operation of aircraft.

A refund application on a form prescribed by the State Tax Assessor must be filed to claim a refund pursuant to this section. Interest must be paid at the rate determined pursuant to section 186, calculated from the date of receipt of the monthly claim, for all proper claims not paid within 30 days of receipt. Applications for refunds must be filed with the assessor within 12 months from the date of purchase.

All fuel that qualifies for a refund under this section is subject to the use tax imposed by chapter 215.

**Sec. 17. 36 MRSA §2909, 2nd ¶**, as repealed and replaced by PL 2003, c. 390, §14, is amended to read:

Applications for refunds must be filed with the State Tax Assessor, on a form prescribed by the assessor and accompanied by the original invoices showing those purchases, within 9 12 months from the date of purchase. A refund may not be issued under this section unless the claimant's commutation fare revenue derived during the calendar quarter for which the refund is claimed is at least 60% of the claimant's total passenger fare revenue derived during that calendar quarter.

**Sec. 18. 36 MRSA §3215, last ¶**, as repealed and replaced by PL 2003, c. 390, §16, is amended to read:

Applications for refunds must be filed with the State Tax Assessor, on a form prescribed by the assessor and accompanied by the original invoices showing those purchases, within 9 12 months from the date of purchase. A refund may not be issued under this section unless the claimant's commutation fare revenue derived during the calendar quarter for which the refund is claimed is at least 60% of the claimant's total passenger fare revenue derived during that calendar quarter.

**Sec. 19. 36 MRSA §3218, first and 2nd ¶¶**, as repealed and replaced by PL 2003, c. 390, §17, are amended to read:

A person who purchases and uses special fuel for any use other than operation of a registered motor vehicle on the highways of this State; and who has paid the tax imposed by this chapter on that fuel, is entitled to reimbursement in the amount of the tax paid, less 1¢ per gallon, upon presenting to the State Tax Assessor a sworn statement accompanied by the original invoices or other evidence as the assessor may require. The statement must show the total amount of special fuel so purchased and used by that person other than in the operation of registered motor vehicles on the highways of this State ~~and or~~ in the operation of aircraft. ~~Applications for refunds must be filed with the assessor within 15 months from the date of purchase.~~

A ~~monthly~~ refund application on a form prescribed by the assessor ~~may~~ must be filed ~~at the close of any month~~ to claim a refund pursuant to this section. Interest must be paid at the rate determined pursuant to section 186, calculated from the date of receipt of the monthly claim, for all proper claims not paid within 30 days of receipt. ~~Nothing in this paragraph may be construed to relieve the applicant from filing quarterly reports as prescribed in section~~

~~3209.~~ Applications for refunds must be filed with the assessor within 12 months from the date of purchase.

**Sec. 20. 36 MRSA §5142, sub-§2, ¶C**, as enacted by PL 2005, c. 12, Pt. LLLL, §2, is amended to read:

C. Proceeds from any gambling activity conducted in this State or lottery tickets purchased in this State, including payments received ~~by~~ from a 3rd party for the transfer of the rights to future proceeds related to any gambling activity or lottery tickets.

**Sec. 21. 36 MRSA §5142, sub-§8**, as repealed and replaced by PL 2003, c. 673, Pt. E, §1 and affected by §3, is repealed.

**Sec. 22. 36 MRSA §5142, sub-§8-A** is enacted to read:

**8-A. Minimum taxability threshold.** Minimum taxability thresholds for nonresidents are as follows.

A. Compensation received during any taxable year after 2003 for personal services performed in this State as an employee prior to January 1, 2004 is Maine-source income subject to taxation under this Part if the nonresident taxpayer is present in the State performing the personal services for more than 10 days during that taxable year.

B. Compensation received during any taxable year after 2003 for personal services performed in this State as an employee after December 31, 2003 is Maine-source income subject to taxation under this Part if the nonresident taxpayer was present in the State performing personal services for more than 10 days during the year in which the personal services were performed.

**Sec. 23. 36 MRSA §5220, sub-§2**, as amended by PL 2003, c. 673, Pt. E, §2 and affected by §3, is further amended to read:

**2. Nonresident individuals.** Every nonresident individual who, pursuant to this Part, has a Maine individual income tax liability for the taxable year. An individual whose only Maine-source income is compensation for personal services performed in Maine that is excluded from Maine adjusted gross income by the threshold contained in section 5142, subsection § 8-A is not subject to taxation under this Part and need not file a return;

**Sec. 24. 36 MRSA §5250-B, sub-§1, ¶C**, as enacted by PL 2003, c. 20, Pt. AA, §1 and affected by §6, is amended to read:

C. "Pass-through entity" means a corporation that for the applicable tax year is treated as an S corporation under the Code; and a general partnership, limited partnership, limited liability partnership, ~~trust~~, limited liability company or similar entity that for the applicable tax year is not taxed as a C corporation for federal tax purposes. For purposes of this section, "pass-through entity" does not include a financial institution subject to tax under chapter 819.

**Sec. 25. 36 MRSA §5276, sub-§1**, as amended by PL 1991, c. 546, §36, is further amended to read:

**1. General rule.** The State Tax Assessor, within the applicable period of limitations, may credit an overpayment of income tax, including an overpayment reported on a joint return, and interest on ~~such~~ the overpayment against any liability arising from a redetermination pursuant to section 6211 or any liability in respect of any tax imposed under this Title or owed by the taxpayer, or by the taxpayer's spouse in the case of a joint return, who made the overpayment, and the balance, after any setoff pursuant to section 5276-A, must be refunded by the Treasurer of State.

**Sec. 26. 36 MRSA §5276, sub-§6** is enacted to read:

**6. Overpayment by pass-through entity.** If there has been an overpayment of tax required to be withheld under section 5250-B, refund must be made to the pass-through entity only to the extent that the amount of the overpayment was not deducted and withheld by the pass-through entity.

**Sec. 27. 36 MRSA §6211**, as enacted by PL 1987, c. 516, §§3 and 6, is amended to read:

#### **§6211. Audit of claim**

If, on the audit of any claim filed under this chapter, the State Tax Assessor determines the amount to have been incorrectly determined, ~~he~~ the assessor shall redetermine the claim and shall notify the claimant of the redetermination and his ~~the~~ reasons for it. The redetermination ~~shall be final unless appealed to the State Tax Assessor within 30 days of notice is reviewable in accordance with section 151.~~ is reviewable in accordance with section 151. If the claim has been paid, the amount paid in excess of that legally due is subject to interest at the rate determined pursuant to section 186. The assessor may credit a benefit payable to a claimant under this chapter against a liability of that claimant pursuant to this section.

**Sec. 28. 36 MRSA §6212**, as amended by PL 1989, c. 534, Pt. A, §9, is repealed and the following enacted in its place:

#### **§6212. Denial of claim**

**1. Fraudulent claim.** If the State Tax Assessor determines that a claim under this chapter is excessive and was filed with fraudulent intent, the claim must be disallowed in full. If the claim has been paid, the amount paid may be recovered by assessment, collection and enforcement in the manner provided in chapter 7. A person who, with fraudulent intent, files or prepares an excessive claim, assists in the preparation or filing of an excessive claim or supplies information in support of an excessive claim commits a Class E crime.

**2. Negligent claim.** If the State Tax Assessor determines that a claim under this chapter is excessive and was negligently prepared, the amount claimed in excess of that legally due plus 10% of the corrected claim must be disallowed. If the claim has been paid, the amount disallowed may be recovered by assessment, collection and enforcement in the manner provided in chapter 7.

**3. Unpaid liability.** A person who has an unpaid liability arising from this section and the spouse of that person are disqualified from receiving benefits under this chapter.

**Sec. 29. 36 MRSA c. 920**, as amended, is repealed.

**Sec. 30. Application.** Those sections of this Act that enact the Maine Revised Statutes, Title 36, section 187-B, subsection 5-B and section 193, subsection 2, paragraphs A and B apply to returns filed for periods beginning on or after January 1, 2006. That section of this Act that amends Title 36, section 1811-B applies to sales occurring on or after September 1, 2005. That section of this Act that amends Title 36, section 5250-B, subsection 1, paragraph C applies to tax years beginning on or after January 1, 2005. Those sections of this Act that repeal Title 36, section 5142, subsection 8 and enact Title 36, section 5142, subsection 8-A apply to tax years beginning on or after January 1, 2004.

See title page for effective date.

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## **CHAPTER 333**

**H.P. 1110 - L.D. 1572**

### **An Act To Amend the Potato Industry Licensing Laws**

**Emergency preamble.** Whereas, acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and