

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SECOND LEGISLATURE**

**SECOND SPECIAL SESSION**  
**July 29, 2005**

**SECOND REGULAR SESSION**  
**January 4, 2006 to May 24, 2006**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**OCTOBER 28, 2005**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**AUGUST 23, 2006**

**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**  
**2006**

calculation of state funding under that section. If a municipality receives net new funds in any fiscal year for which its property tax levy limit has not been adjusted as provided in this subsection, the municipality shall adjust its property tax levy limit in the following year in an amount equal to the net new funds.

See title page for effective date.

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## CHAPTER 622

### H.P. 1218 - L.D. 1711

#### 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. 29-A MRSA §525, sub-§14** is enacted to read:

**14. Venue.** A violation of this section is deemed to have been committed in part at the principal office of the Secretary of State. Prosecution under this section may be in the county where the act to which the proceeding relates occurred or in Kennebec County.

**Sec. 2. 36 MRSA §113, sub-§4** is enacted to read:

**4. Recording fees.** The State Controller may transfer from the General Fund amounts authorized by the State Tax Assessor equal to the fees imposed upon the State by a register of deeds pursuant to Title 33, section 751. These amounts transferred must be deposited into a dedicated, nonlapsing account to be used solely for the purpose of paying those fees. Interest earned on balances in the account accrue to the account. The assessor shall notify the State Controller of the amounts to be transferred pursuant to this subsection.

**Sec. 3. 36 MRSA §115** is enacted to read:

#### **§115. Payment by credit card**

The State Tax Assessor may establish procedures permitting payment of taxes by the use of credit cards. The assessor may contract with one or more entities for the purpose of enabling the assessor to accept and process credit card transactions only if under any such contract the State does not incur any charges or fees from accepting payment by credit card, the State does not have any liability to the credit card company or processor from nonpayment of credit card charges by the taxpayer, any fee associated with payment of taxes by credit card is disclosed to the taxpayer prior to

commencement of the transaction and directly charged to the taxpayer and collected by the processor, all credit card payments are electronically transmitted to the State by the processor immediately upon approval of the credit transaction and the processor retains all responsibility for approving or rejecting all proposed credit card payments.

**Sec. 4. 36 MRSA §653, sub-§1, ¶D-1**, as amended by PL 2003, c. 702, §2, is further amended to read:

D-1. The estates up to the just value of ~~\$47,500~~ \$50,000, having a taxable situs in the place of residence, for specially adapted housing units, of veterans who served in the Armed Forces of the United States during any federally recognized war period, including the Korean Campaign, the Vietnam War and the Persian Gulf War, and who are paraplegic veterans within the meaning of 38 United States Code, Chapter 21, Section 2101, and who received a grant from the United States Government for any such housing, or of the unremarried widows or widowers of such veterans. A veteran of the Vietnam War must have served on active duty for a period of more than 180 days, any part of which occurred after February 27, 1961 and before May 8, 1975 in the case of a veteran who served in the Republic of Vietnam during that period and after August 4, 1964 and before May 7, 1975 in all other cases, unless the veteran died in service or was discharged for a service-connected disability after that date. "Vietnam War" means the period between August 5, 1964 and May 7, 1975 and the period beginning on February 28, 1961 and ending on May 7, 1978 in the case of a veteran who served in the Republic of Vietnam during that period. "Persian Gulf War" means service on active duty on or after August 7, 1990 and before or on the date that the United States Government recognizes as the end of that war period. The exemption provided in this paragraph applies to the property of the veteran including property held in joint tenancy with a spouse or held in a revocable living trust for the benefit of that veteran.

**Sec. 5. 36 MRSA §1760, sub-§2**, as amended by PL 1997, c. 729, Pt. A, §1, is further amended to read:

**2. Certain governmental entities.** Sales to the State or any political subdivision of the State, or to the Federal Government, or to any unincorporated agency or instrumentality of either of them or to any incorporated agency or instrumentality of them wholly owned by them. ~~This exemption does not apply where title is held or taken as security for any financing arrangement.~~ This exemption ~~also~~ does not apply to corporations organized under Title IV, Part E of the Farm

Credit Act of 1971, 12 United States Code, Sections 2211 to 2214.

**Sec. 6. 36 MRSA §1760, sub-§16**, as amended by PL 2003, c. 689, Pt. B, §6 and c. 705, §4 and affected by §14, is repealed and the following enacted in its place:

**16. Hospitals, research centers, churches and schools. Sales to:**

A. Incorporated hospitals;

B. Incorporated nonprofit nursing homes licensed by the Department of Health and Human Services;

C. Incorporated nonprofit residential care facilities licensed by the Department of Health and Human Services;

D. Incorporated nonprofit assisted housing programs for the elderly licensed by the Department of Health and Human Services;

E. Incorporated nonprofit home health agencies certified under the United States Social Security Act of 1965, Title XVIII, as amended;

F. Incorporated nonprofit rural community health centers;

G. Incorporated nonprofit dental health centers;

H. Incorporated nonprofit organizations organized for the sole purpose of conducting medical research;

I. Incorporated nonprofit organizations organized for the purpose of establishing and maintaining laboratories for scientific study and investigation in the field of biology or ecology;

J. Institutions incorporated as nonprofit corporations for the purpose of operating educational television or radio stations;

K. Schools;

L. Incorporated nonprofit organizations or their affiliates whose purpose is to provide literacy assistance or free clinical assistance to children with dyslexia; and

M. Regularly organized churches or houses of religious worship.

**Sec. 7. 36 MRSA §1760, sub-§49**, as repealed and replaced by PL 1999, c. 499, §1, is amended to read:

**49. Child abuse and neglect councils; child advocacy organizations; community action**

**agencies.** ~~Except for the sale, storage or use for activities that are mainly commercial enterprises, sales~~ Sales to:

A. Incorporated, nonprofit child abuse and neglect councils as defined in Title 22, section 3872, subsection 1-A;

B. Statewide organizations that advocate for children and that are members of the Medicaid Advisory Committee; and

C. Community action agencies designated in accordance with Title 22, section 5324.

**Sec. 8. 36 MRSA §1760, sub-§61**, as amended by PL 2003, c. 588, §9, is further amended to read:

**61. Construction contracts with exempt organizations.** Sales to a construction contractor or its subcontractor of tangible personal property that is 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 by section 1760-C.

**Sec. 9. 36 MRSA §1760-C**, as amended by PL 1999, c. 708, §31, is further amended to read:

**§1760-C. Exempt activities**

~~Unless otherwise provided by section 1760, the sales or use~~ The tax exemptions provided by that section 1760 to an entity a person based upon its charitable, nonprofit or other public purposes apply only if the property or service purchased is intended to be used by the entity person primarily in the activity identified by the particular exemption. The tax exemptions provided by section 1760 to a person based upon its charitable, nonprofit or other public purposes do not apply where title is held or taken by the person as security for any financing arrangement. Exemption certificates issued by the State Tax Assessor pursuant to section 1760 must identify the exempt activity and must state that the certificate may be used by the holder only ~~to purchase when purchasing~~ property or services intended to be used by the holder primarily in the exempt activity. When an otherwise qualifying ~~exempt~~ person is engaged in both exempt and nonexempt activities, an exemption certificate may be issued to the person only if the person has established to the satisfaction of the assessor that the applicant has adequate accounting controls to limit the use of the certificate to exempt purchases.

**Sec. 10. 36 MRSA §2557, sub-§3**, as enacted by PL 2003, c. 673, Pt. V, §25 and affected by §29, is repealed and the following enacted in its place:

**3. Hospitals, research centers, churches and schools.** Sales to:

- A. Incorporated hospitals;
- B. Incorporated nonprofit nursing homes licensed by the Department of Health and Human Services;
- C. Incorporated nonprofit residential care facilities licensed by the Department of Health and Human Services;
- D. Incorporated nonprofit assisted housing programs for the elderly licensed by the Department of Health and Human Services;
- E. Incorporated nonprofit home health agencies certified under the United States Social Security Act of 1965, Title XVIII, as amended;
- F. Incorporated nonprofit rural community health centers;
- G. Incorporated nonprofit dental health centers;
- H. Incorporated nonprofit organizations organized for the sole purpose of conducting medical research;
- I. Incorporated nonprofit organizations organized for the purpose of establishing and maintaining laboratories for scientific study and investigation in the field of biology or ecology;
- J. Institutions incorporated as nonprofit corporations for the purpose of operating educational television or radio stations;
- K. Schools;
- L. Incorporated nonprofit organizations or their affiliates whose purpose is to provide literacy assistance or free clinical assistance to children with dyslexia; and
- M. Regularly organized churches or houses of religious worship.

**Sec. 11. 36 MRSA §2557, sub-§13**, as enacted by PL 2003, c. 673, Pt. V, §25 and affected by §29, is amended to read:

**13. Child abuse and neglect councils; child advocacy organizations; community action agencies.** ~~Except for the sale, storage or use for activities that are mainly commercial enterprises, sales~~ Sales to:

- A. Incorporated, nonprofit child abuse and neglect councils as defined in Title 22, section 3872, subsection 1-A;

B. Statewide organizations that advocate for children and that are members of the Medicaid Advisory Committee; and

C. Community action agencies designated in accordance with Title 22, section 5324;

**Sec. 12. 36 MRSA §2557, sub-§31**, as enacted by PL 2005, c. 218, §36, is amended 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 by section 2560.

**Sec. 13. 36 MRSA §2560** is enacted to read:

**§2560. Exempt activities**

A tax exemption provided by section 2557 to a person based upon its charitable, nonprofit or other public purposes applies only if the service purchased is intended to be used by the person primarily in the activity identified by the particular exemption. A tax exemption provided by section 2557 to a person based upon its charitable, nonprofit or other public purposes does not apply where title is held or taken by the person as security for any financing arrangement. An exemption certificate issued by the State Tax Assessor pursuant to section 2557 must identify the exempt activity and must state that the certificate may be used by the holder only when purchasing services intended to be used by the holder primarily in the exempt activity. When an otherwise qualifying person is engaged in both exempt and nonexempt activities, an exemption certificate may be issued to the person only if the person has established to the satisfaction of the assessor that the applicant has adequate accounting controls to limit the use of the certificate to exempt purchases.

**Sec. 14. 36 MRSA §3204-B, sub-§4** is enacted to read:

**4. Venue.** A violation of this section is deemed to have been committed in part at the principal office of the assessor. Prosecution under this section may be in the county where the act to which the proceeding relates occurred or in Kennebec County.

**Sec. 15. 36 MRSA §4062, sub-§2-A**, as enacted by PL 2005, c. 12, Pt. N, §2 and affected by §4, is amended to read:

**2-A. Maine elective property.** "Maine elective property" means all property in which the decedent at the time of death had a qualified income interest for life and with respect to which, for purposes of

determining the tax imposed by this chapter on the estate of a predeceased spouse of the decedent, the federal taxable estate of ~~such that~~ predeceased spouse was decreased pursuant to subsection 1-A, paragraph A, subparagraph (3). The value of Maine elective property is the value ~~finally~~ determined by the assessor in accordance with the Code as if such property were includible in the decedent's federal gross estate pursuant to the Code, Section 2044 and, in the case of estates that do not incur a federal estate tax, as if the estate had incurred a federal estate tax.

**Sec. 16. 36 MRSA §4062, sub-§2-B, ¶C**, as enacted by PL 2005, c. 12, Pt. N, §2 and affected by §4, is amended to read:

C. With respect to which an election is made, on a return filed timely with the State Tax Assessor, to treat the property as Maine qualified terminable interest property for purposes of the tax imposed by this chapter. The amount of property with respect to which such election is made may not be greater than the amount, if any, by which the applicable exclusion amount determined as of the date of the decedent's death using the Code, Section 2010(c) in effect on that date exceeds the applicable exclusion amount determined as of the date of the decedent's death using the Code, Section 2010(c) in effect on December 31, 2000. ~~The value of Maine qualified terminable interest property is the value finally determined by the assessor in accordance with the Code and, in the case of estates that do not incur a federal estate tax, as if the estate had incurred a federal estate tax.~~

**Sec. 17. 36 MRSA §4062, sub-§8** is enacted to read:

**8. Value.** When determining value for purposes of this chapter, "value" means, with respect to an estate or to property included in an estate, including Maine qualified terminable interest property:

A. For estates of decedents that incur a federal estate tax, the value as finally determined for federal estate tax purposes unless the State Tax Assessor has determined a different value in accordance with the Code; or

B. For estates of decedents that do not incur a federal estate tax, the value as determined by the State Tax Assessor in accordance with the Code as if the estate had incurred a federal estate tax.

**Sec. 18. 36 MRSA §4063**, as amended by PL 2003, c. 673, Pt. D, §3, is repealed and the following enacted in its place:

**§4063. Tax on estate of resident**

A tax is imposed upon the transfer of the estate of every person who dies on or after January 1, 2002 and who, at the time of death, was a resident of this State. The amount of this tax is equal to the federal credit multiplied by a fraction, the numerator of which is that portion of the decedent's federal gross estate that consists of real and tangible personal property located in the State plus all intangible personal property and the denominator of which is the decedent's federal gross estate. For purposes of this section, "federal gross estate" means the decedent's federal gross estate as modified by Maine qualified terminable interest property and Maine elective property.

**Sec. 19. 36 MRSA §4063-A, sub-§2**, as enacted by PL 2001, c. 559, Pt. GG, §5 and affected by §26, is repealed.

**Sec. 20. 36 MRSA §4064, first ¶**, as amended by PL 2005, c. 218, §42, 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 in this State 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. 21. 36 MRSA §4064-A, sub-§1**, as enacted by PL 2001, c. 559, Pt. GG, §7 and affected by §26, is amended to read:

**1. Amount.** 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 during the calendar year 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, the tax imposed by this section applies as if the trust 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 gross estate as finally determined for federal estate tax purposes. The amount of this tax is equal to the lesser of:

A. That proportion of the federal estate tax calculated prior to the application of the federal credit that the value of Maine real and tangible personal property taxed in this State that qualifies for the credit bears to the value of the decedent's total federal gross estate; and

B. That proportion of the federal credit divided by .75 that the value of Maine real and tangible personal property taxed in this State that qualifies for the credit bears to the value of the decedent's total federal gross estate.

~~All values are as finally determined for federal estate tax purposes.~~ 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. 22. 36 MRSA §4071, sub-§1**, as amended by PL 2003, c. 673, Pt. D, §8 and affected by §9, is further amended to read:

**1. Final federal determination.** A final federal determination as to any of the following issues ~~shall also determine~~ determines the same issue for purposes of the tax under this chapter:

A. The inclusion in the federal gross estate of any item of property or interest in property;

B. The allowance of any item claimed as a deduction from the federal gross estate; ~~or~~

~~C. The value or amount of any such item;~~

~~D. The value of the federal gross estate generally; or~~

E. For estates of decedents dying before January 1, 2003, the amount of the federal credit.

**Sec. 23. 36 MRSA §4071, sub-§3**, as enacted by PL 1981, c. 451, §7, is amended to read:

**3. Items entering computation of tax.** If there has been a final federal determination with respect to a decedent's federal estate tax, any item, but not its

value, entering into the computation of the tax ~~shall be is~~ deemed to have been the subject of the final federal determination, whether or not specifically adjusted thereby.

**Sec. 24. 36 MRSA §4075-A, sub-§1**, as enacted by PL 1995, c. 281, §23, is amended to read:

**1. Refund.** ~~In the case of any overpayment of tax imposed by this chapter, the State Tax Assessor shall authorize the Treasurer of State to refund the overpayment and any applicable interest to the Δ personal representative or the responsible party otherwise liable for the tax imposed by this chapter may request a refund of any tax imposed by this chapter within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever period expires later. Every claim for refund must be submitted to the State Tax Assessor in writing and state the specific grounds upon which it is founded. The claimant may in writing request an informal conference regarding the claim for refund pursuant to the provisions of section 151.~~

**Sec. 25. 36 MRSA §4366-A, sub-§2**, as amended by PL 2005, c. 457, Pt. AA, §§4 and 5 and affected by §8, is further amended to read:

**2. Provided to sellers.** The State Tax Assessor shall provide stamps suitable to be affixed to packages of cigarettes as evidence of the payment of the tax imposed by this chapter. The assessor may permit a licensed distributor to pay for the stamps within 30 days after the date of purchase, if a bond satisfactory to the assessor in an amount not less than 50% of the sale price of the stamps has been filed with the assessor conditioned upon payment for the stamps. Such a distributor may continue to purchase stamps on a 30-day deferral basis only if it remains current with its cigarette tax obligations. The assessor may not sell additional stamps to a distributor that has failed to pay in full within 30 days for stamps previously purchased until such time as the overdue payment is received. The assessor shall sell cigarette stamps to licensed distributors at the following discounts from their face value:

A. For stamps at the face value of 37 mills sold through September 30, 2001, 2.5%;

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

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

D. For stamps at the face value of 100 mills, 1.15%.

**Sec. 26. 36 MRSA §5122, sub-§2, ¶T**, as amended by PL 2005, c. 416, §2, is further amended to read:

T. For income tax years beginning on or after January 1, 2002 and before January 1, 2004, an amount equal to the total premiums spent for long-term care insurance policies certified under Title 24-A, section 5075-A as long as the amount subtracted is reduced by the long-term care premiums claimed as an itemized deduction pursuant to section 5125.

For income tax years beginning on or after January 1, 2004, an amount equal to the total premiums spent for qualified long-term care insurance contracts certified under Title 24-A, section 5075-A, as long as the amount subtracted is reduced by any amount claimed as a deduction for federal income tax purposes in accordance with the Code, Section 162(l) and by the long-term care premiums claimed as an itemized deduction pursuant to section 5125; ~~and~~

**Sec. 27. 36 MRSA §5122, sub-§2, ¶U**, as enacted by PL 2005, c. 416, §3, is amended to read:

U. For income tax years beginning on or after January 1, 2015, the gain attributable to the sale of sustainably managed, eligible timberlands as calculated in this paragraph.

(1) As used in this paragraph, unless the context otherwise indicates, the following terms have the following meanings.

(a) "Commercial harvesting" or "commercially harvested" means the harvesting of forest products that have commercial value.

(b) "Eligible timberlands" means land of at least 10 acres located in the State and used primarily for the growth of trees to be commercially harvested. Land that would otherwise be included within this definition may not be excluded because of:

(i) Use of the land for multiple public recreation activities;

(ii) Statutory or governmental restrictions that prevent commercial harvesting of trees or require a primary use of the land other than commercial harvesting;

(iii) Deed restrictions, restrictive covenants or organizational

charters that prevent commercial harvesting of trees or require a primary use of land other than commercial harvesting and that were effective prior to January 1, 1982; or

(iv) Past or present multiple use for mineral exploration.

(c) "Forest products that have commercial value" means logs, pulpwood, veneer, bolt wood, wood chips, stud wood, poles, pilings, biomass, fuel wood, Christmas trees, maple syrup, nursery products used for ornamental purposes, wreaths, bough material or cones or other seed products.

(d) "Sustainably managed" means:

(i) A forest management and harvest plan, as defined in section 573, subsection 3-A, has been prepared for the eligible timberlands and has been in effect for the entire time period used to compute the amount of the subtraction modification under this paragraph; and

(ii) The taxpayer has received a written statement from a licensed forester certifying that, as of the time of the sale, the eligible timberlands have been managed in accordance with the plan under subdivision (i) during that period.

(2) To the extent they are included in the taxpayer's federal adjusted gross income, the following amounts must be subtracted from federal adjusted gross income:

(a) For eligible timberlands held by the taxpayer for at least a 10-year period beginning on or after January 1, 2005 but less than an 11-year period beginning on or after January 1, 2005, 1/15 of the gain recognized on the sale of the eligible timberlands;

(b) For eligible timberlands held by the taxpayer for at least an 11-year period beginning on or after January 1, 2005 but less than a 12-year period beginning on or after January 1, 2005, 2/15 of the gain recognized on the sale of the eligible timberlands;



(c) For eligible timberlands held by the taxpayer for at least a 12-year period beginning on or after January 1, 2005 but less than a 13-year period beginning on or after January 1, 2005, 1/5 of the gain recognized on the sale of the eligible timberlands;

(d) For eligible timberlands held by the taxpayer for at least a 13-year period beginning on or after January 1, 2005 but less than a 14-year period beginning on or after January 1, 2005, 4/15 of the gain recognized on the sale of the eligible timberlands;

(e) For eligible timberlands held by the taxpayer for at least a 14-year period beginning on or after January 1, 2005 but less than a 15-year period beginning on or after January 1, 2005, 1/3 of the gain recognized on the sale of the eligible timberlands;

(f) For eligible timberlands held by the taxpayer for at least a 15-year period beginning on or after January 1, 2005 but less than a 16-year period beginning on or after January 1, 2005, 2/5 of the gain recognized on the sale of the eligible timberlands;

(g) For eligible timberlands held by the taxpayer for at least a 16-year period beginning on or after January 1, 2005 but less than a 17-year period beginning on or after January 1, 2005, 7/15 of the gain recognized on the sale of the eligible timberlands;

(h) For eligible timberlands held by the taxpayer for at least a 17-year period beginning on or after January 1, 2005 but less than an 18-year period beginning on or after January 1, 2005, 8/15 of the gain recognized on the sale of the eligible timberlands;

(i) For eligible timberlands held by the taxpayer for at least an 18-year period beginning on or after January 1, 2005 but less than a 19-year period beginning on or after January 1, 2005, 3/5 of the gain recognized on the sale of the eligible timberlands;

(j) For eligible timberlands held by the taxpayer for at least a 19-year period beginning on or after January 1, 2005 but less than a 20-year period beginning on or after January 1, 2005,

2/3 of the gain recognized on the sale of the eligible timberlands;

(k) For eligible timberlands held by the taxpayer for at least a 20-year period beginning on or after January 1, 2005 but less than a 21-year period beginning on or after January 1, 2005, 11/15 of the gain recognized on the sale of the eligible timberlands;

(l) For eligible timberlands held by the taxpayer for at least a 21-year period beginning on or after January 1, 2005 but less than a 22-year period beginning on or after January 1, 2005, 4/5 of the gain recognized on the sale of the eligible timberlands;

(m) For eligible timberlands held by the taxpayer for at least a 22-year period beginning on or after January 1, 2005 but less than a 23-year period beginning on or after January 1, 2005, 13/15 of the gain recognized on the sale of the eligible timberlands;

(n) For eligible timberlands held by the taxpayer for at least a 23-year period beginning on or after January 1, 2005 but less than a 24-year period beginning on or after January 1, 2005, 14/15 of the gain recognized on the sale of the eligible timberlands; or

(o) For eligible timberlands held by the taxpayer for at least a 24-year period beginning on or after January 1, 2005, all of the gain recognized on the sale of the eligible timberlands.

(3) Taxpayers claiming this credit must attach a sworn statement from a forester licensed pursuant to Title 32, chapter 76 that the timberlands for which the credit is claimed have been managed sustainably. For the purposes of this subparagraph, "sustainably" means that the timberlands for which the credit is claimed have been managed to protect soil productivity and to maintain or improve stand productivity and timber quality; known occurrences of threatened or endangered species and rare or exemplary natural communities; significant wildlife habitat and essential wildlife habitat; and water quality, wetlands and riparian zones.

Upon request of the State Tax Assessor, the Director of the Bureau of Forestry within the Department of Conservation may pro-

vide assistance in determining whether timberlands for which the credit is claimed have been managed sustainably. When assistance is requested under this subparagraph, the director or the director's designee may enter and examine the timberlands for the purpose of determining whether the timberlands have been managed sustainably.

In the case of timberlands owned by an entity that is treated as a pass-through entity for income tax purposes, the land must be treated as eligible timberland if ownership and use of the land by the pass-through entity satisfies the requirements of this paragraph. If the owner of the eligible timberlands is an S corporation, the taxpayer must subtract the owner's pro rata share of the gain. If the owner of the timberlands is a partnership or limited liability company taxed as a partnership, the taxpayer must subtract the taxpayer's distributive share of the gain, subject to the percentage limitations provided in this paragraph.

This modification may not reduce Maine taxable income to less than zero. To the extent this modification results in Maine taxable income that is less than zero for the taxable year, the excess negative modification amount may be carried forward and applied as a subtraction modification for up to 10 taxable years. The entire amount of the excess negative modification must be carried to the earliest of the taxable years to which, by reason of this subsection, the negative modification may be carried and then to each of the other taxable years to the extent the unused negative modification is not used for a prior taxable year. Earlier carry-forward modifications must be used before newer modifications generated in later years;

**Sec. 28.** 36 MRSA §5122, sub-§2, ¶V is enacted to read:

V. The taxpayer's pro rata share of an amount that was previously added back to federal taxable income pursuant to section 5200-A, subsection 1, paragraph H by an S corporation of which the taxpayer is a shareholder and by which, absent the S corporation election, the corporation could have reduced its federal taxable income for the taxable year pursuant to section 5200-A, subsection 2, paragraph H;

**Sec. 29.** 36 MRSA §5122, sub-§2, ¶W is enacted to read:

W. The taxpayer's pro rata share of an amount that was previously added back to federal taxable

income pursuant to section 5200-A, subsection 1, paragraph M by an S corporation of which the taxpayer is a shareholder and by which, absent the S corporation election, the corporation could have reduced its federal taxable income for the taxable year pursuant to section 5200-A, subsection 2, paragraph L; and

**Sec. 30.** 36 MRSA §5122, sub-§2, ¶X is enacted to read:

X. The taxpayer's pro rata share of an amount that was previously added back to federal taxable income pursuant to section 5200-A, subsection 1, paragraph N by an S corporation of which the taxpayer is a shareholder and by which, absent the S corporation election, the corporation could have reduced its federal taxable income for the taxable year pursuant to section 5200-A, subsection 2, paragraph M.

**Sec. 31.** 36 MRSA §6664, sub-§2, as enacted by PL 2005, c. 12, Pt. BBB, §5, is amended to read:

**2. Cooperation.** ~~The Claimants for reimbursement under this chapter, the~~ Department of Economic and Community Development and municipalities shall provide any information requested by the State Tax Assessor for the completion of the report required by this section.

**Sec. 32.** 36 MRSA §6754, sub-§2, ¶C, as enacted by PL 1995, c. 669, §5, is amended to read:

C. A business electing to take the jobs and investment tax credit under section 5215 may not claim reimbursement under this chapter until the full amount of allowable jobs and investment tax credit benefits have been claimed. This limitation does not apply to claims for reimbursement of withholding for qualified Pine Tree Development Zone employees as defined in Title 30-A, section 5250-I, subsection 18, if those employees and any investment in the related Pine Tree Development Zone are not included in calculating the jobs and investment tax credit under section 5215.

**Sec. 33. Application.** That section of this Act that enacts the Maine Revised Statutes, Title 36, section 4062, subsection 8 applies to the estate of any decedent dying on or after January 1, 2006. Those sections of this Act that amend Title 36, section 4071, subsections 1 and 3 apply to the estate of any decedent dying on or after January 1, 2006. Those sections of this Act that enact Title 36, section 5122, subsection 2, paragraphs V, W and X apply to tax years beginning on or after January 1, 2005. That section of this Act that amends Title 36, section 6754, subsection 2,

paragraph C applies to tax years beginning on or after January 1, 2006.

**Sec. 34. Retroactivity.** That section of this Act that amends the Maine Revised Statutes, Title 36, section 4366-A, subsection 2 applies retroactively to September 19, 2005. That section of this Act that amends Title 36, section 6664 applies retroactively to June 29, 2005.

**Sec. 35. Effective date.** That section of this Act that enacts the Maine Revised Statutes, Title 36, section 113, subsection 4 is effective July 1, 2007.

See title page for effective date, unless otherwise indicated.

**CHAPTER 623**

**H.P. 1452 - L.D. 2056**

**An Act To Replace Municipal Revenues Subject to Business Equipment Property Tax Exemption**

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

**Sec. 1. 36 MRSA c. 105, sub-c. 4-C** is enacted to read:

**SUBCHAPTER 4-C**

**BUSINESS EQUIPMENT TAX EXEMPTION**

**§691. Definitions; exemption limitations**

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

A. "Eligible business equipment" means qualified property that, in the absence of this subchapter, would first be subject to assessment under this Part on or after April 1, 2008. "Eligible business equipment" includes, without limitation, repair parts, replacement parts, replacement equipment, additions, accessions and accessories to other qualified business property that first became subject to assessment under this Part before April 1, 2008 if the part, addition, equipment, accession or accessory would, in the absence of this subchapter, first be subject to assessment under this Part on or after April 1, 2008. "Eligible business equipment" also includes inventory parts.

"Eligible business equipment" does not include:

(1) Office furniture, including, without limitation, tables, chairs, desks, bookcases, filing cabinets and modular office partitions;

(2) Lamps and lighting fixtures used primarily for the purpose of providing general purpose office or worker lighting;

(3) Property owned or used by an excluded person;

(4) Telecommunications personal property subject to the tax imposed by section 457;

(5) 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:

(a) Associated equipment as defined in Title 8, section 1001, subsection 2;

(b) Computer equipment used directly and primarily in the operation of a slot machine as defined in Title 8, section 1001, subsection 39;

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

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

(e) Repair and replacement parts of a gambling machine or device; or

(6) Property located at a retail sales facility and used primarily in a retail sales activity unless the property is owned by a business that operates a retail sales facility in the State exceeding 100,000 square feet of interior customer selling space that is used primarily for retail sales and whose Maine-based operations derive less than 30% of their total annual revenue on a calendar year basis from sales that are made at a retail sales facility located in the State. For purposes of this subparagraph, the following terms have the following meanings:

(a) "Primarily" means more than 50% of the time;