

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 3, 2008 to June 13, 2009**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 12, 2009**

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

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**Augusta, Maine**  
**2009**

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

**Sec. 1. 38 MRSA §349-B, sub-§1, ¶B** is enacted to read:

B. "Business" means a corporation, business trust, trust, partnership, limited liability company, association, joint venture, firm, association, or organization or any other legal or commercial entity.

**Sec. 2. 38 MRSA §349-B, sub-§1, ¶C** is enacted to read:

C. "Direct financial interest" means ownership or part ownership of a business, including lands, stocks, bonds, debentures, warrants, partnership shares or other holdings, and also means any other arrangement where the individual may benefit from that individual's holding in or salary from that business. "Direct financial interest" includes employment, pensions, creditor relationships, real property and other financial relationships.

**Sec. 3. 38 MRSA §349-B, sub-§2**, as enacted by PL 2007, c. 300, §1, is amended to read:

**2. Debarment.** The commissioner may, after hearing, debar from participation in contracts with the department for 2 years any ~~person~~ individual or business found to have committed a repeat violation when either the time for filing an appeal of the determination of that violation has expired or the appeals process has been exhausted.

A. If an individual is debarred under this section, any business in which that individual holds a direct financial interest may also be debarred if the commissioner finds that the individual is in a position to substantially influence the business's compliance with the laws and rules administered by the department.

B. If a business is debarred under this section:

(1) Any individual that holds a direct financial interest in that debarred business may also be debarred if the commissioner finds that the individual knew or should have known of the actions or inactions upon which the debarment of the business is based and was or is in a position to substantially influence the debarred business's compliance with the laws and rules administered by the department; and

(2) Any other business that holds a direct financial interest in that debarred business may also be debarred if the commissioner finds that either business was or is in a position to substantially influence compliance by the

other business with the laws and rules administered by the department.

See title page for effective date.

**CHAPTER 361**

**H.P. 980 - L.D. 1401**

**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. 27 MRSA §511, sub-§2**, as enacted by PL 2007, c. 539, Pt. WW, §1, is amended to read:

**2. Certification.** The director shall certify information necessary for applicants to demonstrate eligibility for an income tax credit under Title 36, section 5219-BB, including, but not limited to:

A. That rehabilitations of certified historic structures are consistent with the United States Secretary of the Interior's Standards for Rehabilitation; and

B. That historic structures are listed in or are eligible for listing in the National Register of Historic Places or are in certified local districts; and

~~C. The amount of qualified rehabilitation expenditures associated with each project for which an income tax credit will be claimed.~~

When performing the certification required by this subsection, the director shall interpret the provisions of this subsection in a manner consistent with the provisions of the federal Internal Revenue Code, Section 47.

**Sec. 2. 30-A MRSA §4722, sub-§1, ¶BB**, as amended by PL 2007, c. 645, §2, is further amended to read:

BB. Make a loan, or contract with a financial institution to make a loan on behalf of the Maine State Housing Authority, to pay off an existing loan or to pay amounts past due on an existing loan on an owner-occupied single-family residence to assist a homeowner who is in default of the existing loan or in danger of losing the residence through foreclosure. Prior to receiving a loan under this paragraph, a homeowner must receive counseling with a 3rd-party, nonprofit organization approved by the United States Department of Housing and Urban Development, a housing financing agency of this State or the regulatory agency that has jurisdiction over the creditor; and

**Sec. 3. 30-A MRSA §4722, sub-§1, ¶CC**, as enacted by PL 2007, c. 645, §3, is amended to read:

CC. Encourage and provide incentives to individuals and entities that conserve energy; support and participate, with resources derived from sources except the conservation program fund under Title 35-A, section 3211-A, subsection 5, in markets that reward energy conservation and use the proceeds from this participation to support affordable housing programs under its jurisdiction; and create and administer programs that encourage individuals and entities to conserve energy; and

**Sec. 4. 30-A MRSA §4722, sub-§1, ¶DD** is enacted to read:

DD. Certify affordable housing projects for the purpose of the income tax credit increase under Title 36, section 5219-BB, subsection 3; administer and enforce the affordability requirements set forth in this paragraph; and perform other functions described in this paragraph and necessary to the powers and duties described in this paragraph.

(1) For purposes of this paragraph, unless the context otherwise indicates, the following terms have the following meanings.

(a) "Affordable housing" means a decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 60% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 412, 50 Stat. 888, Section 8, as amended.

(b) "Affordable housing project" means a project in which:

(i) At least 50% of the aggregate square feet of the completed project is housing of which at least 50% of the aggregate square feet of the completed housing creates new affordable housing; or

(ii) At least 33% of the aggregate square feet of the completed project creates new affordable housing.

(2) An affordable housing project for which the owner of the property received the income tax credit increase under Title 36, section 5219-BB, subsection 3 must remain an affordable housing project for 30 years from the date the affordable housing project is placed in service. If the property does not remain an affordable housing project for 30 years from the date the affordable housing project is

placed in service, the owner of the property shall pay to the Maine State Housing Authority for application to the Housing Opportunities for Maine Fund established under section 4853 an amount equal to the income tax credit increase allowed under Title 36, section 5219-BB, subsection 3, plus interest on that amount at the rate of 7% per annum from the date the property is placed in service until the date of payment of all amounts due. The affordability requirements and the repayment obligation in this subparagraph must be set forth in a restrictive covenant executed by the owner of the property and the affordable housing project for the benefit of and enforceable by the Maine State Housing Authority and recorded in the appropriate registry of deeds before the owner of the property claims the income tax credit increase under Title 36, section 5219-BB, subsection 3.

(3) If the repayment obligation in subparagraph (2) is not fully satisfied after written notice is sent by certified mail or registered mail to the owner of the property at the owner's last known address, the Maine State Housing Authority may file a notice of lien in the registry of deeds of the county in which the real property subject to the lien is located. The notice of lien must specify the amount and interest due, the name and last known address of the owner, a description of the property subject to the lien and the Maine State Housing Authority's address and the name and address of its attorney, if any. The Maine State Housing Authority shall send a copy of the notice of lien filed in the registry by certified mail or registered mail to the owner of the property at the owner's last known address and to any person who has a security interest, mortgage, lien, encumbrance or other interest in the property that is properly recorded in the registry of deeds in which the property is located. The lien arises and becomes perfected at the time the notice is filed in the appropriate registry of deeds in accordance with this subparagraph. The lien constitutes a lien on all property with respect to which the owner receives the income tax credit increase under Title 36, Section 5219-BB, subsection 3 and the proceeds of any disposition of the property that occurs after notice to the owner of the repayment obligation. The lien is prior to any mortgage and security interest, lien, restrictive covenant or other encumbrance recorded, filed or otherwise perfected after the notice of lien is filed in the appropriate registry of deeds. The lien may be enforced by a turnover or sale order in accordance with Title 14, section 3131 or

any other manner in which a judgment lien may be enforced under the law. The lien must be in the amount of the income tax credit increase allowed under Title 36, section 5219-BB, subsection 3, plus interest on that amount at the rate of 7% per annum from the date the property is placed in service until the date of payment of all amounts due. Upon receipt of payment of all amounts due under the lien, the Maine State Housing Authority shall execute a discharge lien for filing in the registry or offices in which the notice of lien was filed.

(4) Annually by every August 1st until and including August 1, 2013, the Maine State Housing Authority shall review the report issued pursuant to Title 27, section 511, subsection 5, paragraph A to determine the percentage of the total aggregate square feet of completed projects that constitutes new affordable housing, rehabilitated and developed using:

(a) Either of the income tax credits under Title 36, section 5219-BB, subsection 2; and

(b) The income tax credit increase under Title 36, section 5219-BB, subsection 3.

If the total aggregate square feet of new affordable housing does not equal or exceed 30% of the total aggregate square feet of rehabilitated and developed completed projects eligible for a credit under Title 36, section 5219-BB, the Maine State Housing Authority and Maine Historic Preservation Commission shall notify the State Tax Assessor of this fact.

**Sec. 5. 36 MRSA §112, sub-§13** is enacted to read:

**13. Set-off agreements.** The assessor may enter into agreements with other taxing jurisdictions to provide for collection of tax debts by means of setoffs as provided in this subsection.

A. The assessor may enter into an agreement with the Federal Government pursuant to the Code, Section 6402(e) to set off against tax refunds payable by the Federal Government and pay to this State taxes owed to this State.

B. The assessor may enter into an agreement with another state or an agency of another state to set off against tax refunds payable by the other state and pay to this State taxes owed to this State.

C. In conjunction with an agreement authorized under paragraph B, the assessor may enter into an agreement that allows the other state to set off against tax refunds payable by this State taxes

owed to the other state. The assessor may enter into an agreement authorized by this paragraph only if the other state allows this State to set off against tax refunds owed by the other state taxes owed to this State on substantially similar terms.

D. The assessor may enter into an agreement authorized by paragraph C only if the agreement provides that the other state may not set off against tax refunds payable by this State unless the other state has notified the taxpayer of the taxes due and has given the taxpayer an opportunity for review or appeal of the tax debt. The other state must certify to the assessor that it has notified the taxpayer of the taxes due and has given the taxpayer an opportunity for review or appeal of the tax debt before the setoff is exercised.

E. For purposes of this subsection, "tax" includes monetary restitution ordered to be paid to the bureau as part of a sentence imposed for a violation of this Title or Title 17-A.

**Sec. 6. 36 MRSA §183-A** is enacted to read:

**§183-A. Subsequent offenses**

**1. Prior conviction; Class D crimes.** A person who commits a Class D crime under this Title who has a prior conviction for a Class B, Class C or Class D crime under this Title commits a Class C crime.

**2. Prior conviction; Class C crimes.** A person who commits a Class C crime under this Title who has a prior conviction for a Class B, Class C or Class D crime under this Title commits a Class B crime.

**3. Allegation of prior conviction when sentence enhanced.** Title 17-A, section 9-A governs the use of prior convictions when determining a sentence under this section.

**Sec. 7. 36 MRSA §184, sub-§2**, as enacted by PL 2003, c. 452, Pt. U, §1 and affected by Pt. X, §2, is repealed.

**Sec. 8. 36 MRSA §184-A, sub-§1-A**, as enacted by PL 2003, c. 452, Pt. U, §2 and affected by Pt. X, §2, is repealed.

**Sec. 9. 36 MRSA §184-A, sub-§2-A**, as enacted by PL 2003, c. 452, Pt. U, §2 and affected by Pt. X, §2, is repealed.

**Sec. 10. 36 MRSA §185, sub-§4** is enacted to read:

**4. Restitution.** For purposes of this section, "liquidated tax liability" includes monetary restitution ordered to be paid to the bureau as part of a sentence imposed for a violation of this Title or Title 17-A.

**Sec. 11. 36 MRSA §191, sub-§2, ¶K**, as repealed and replaced by PL 1987, c. 769, Pt. A, §145, is amended to read:

K. The disclosure by a municipal assessor, or by the State Tax Assessor with regard to the unorganized territory, of information contained on ~~the~~ a declaration of value form required by filed pursuant to section 4641-B 4641-D or the Internet publication by the State Tax Assessor of information, other than taxpayer identification numbers, obtained from declarations of value filed pursuant to section 4641-D;

**Sec. 12. 36 MRSA §191, sub-§2, ¶JJ,** as amended by PL 2007, c. 539, Pt. M, §3 and Pt. OO, §6; c. 693, §8; and c. 694, §2, is further amended to read:

JJ. The disclosure to the State Purchasing Agent of a person's sales tax standing as necessary to enforce Title 5, section 1825-B, subsection 14; ~~and~~

**Sec. 13. 36 MRSA §191, sub-§2, ¶KK,** as enacted by PL 2007, c. 539, Pt. M, §4, is amended to read:

KK. The disclosure of information necessary to administer the setoff of liquidated tax debts pursuant to section 185, subsection 3-;

**Sec. 14. 36 MRSA §191, sub-§2, ¶KK,** as enacted by PL 2007, c. 539, Pt. OO, §7, is reallocated to 36 MRSA §191, sub-§2, ¶LL.

**Sec. 15. 36 MRSA §191, sub-§2, ¶KK,** as enacted by PL 2007, c. 693, §9, is reallocated to 36 MRSA §191, sub-§2, ¶MM.

**Sec. 16. 36 MRSA §191, sub-§2, ¶KK,** as enacted by PL 2007, c. 694, §3, is reallocated to 36 MRSA §191, sub-§2, ¶NN.

**Sec. 17. 36 MRSA §191, sub-§2, ¶OO** is enacted to read:

OO. The disclosure to duly authorized officers of the Federal Government and of other state governments of information necessary to administer a set-off agreement pursuant to section 112, subsection 13. The information may not be disclosed unless the officer's government permits a substantially similar disclosure of information to the taxing officials of this State and protects the confidentiality of the information in a manner substantially similar to that provided by this section.

**Sec. 18. 36 MRSA §1760, sub-§25,** as amended by PL 2007, c. 438, §39, is further amended to read:

**25. Watercraft sold to nonresidents.** Sales of watercraft to a person that is not a resident of this State, when the watercraft is ~~intended to be~~ sailed or transported outside the State ~~immediately upon~~ within 30 days of delivery by the seller; sales to a person that is not a resident of this State, under contracts for the construction of a watercraft ~~intended to be~~ that is sailed or transported outside the State ~~immediately~~

~~upon~~ within 30 days of delivery by the seller, of materials to be incorporated in the watercraft; and sales to a person that is not a resident of this State, for the repair, alteration, refitting, reconstruction, overhaul or restoration of a watercraft ~~intended to be~~ that is sailed or transported outside the State ~~immediately upon~~ within 30 days of 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.

**Sec. 19. 36 MRSA §1760, sub-§41,** as amended by PL 1999, c. 759, §3 and affected by §4, is further amended to read:

**41. Certain instrumentalities of interstate or foreign commerce.** The sale of a vehicle, railroad rolling stock, aircraft or watercraft that is placed in use by the purchaser as an instrumentality of interstate or foreign commerce within 30 days after that sale and that is used by the purchaser not less than 80% of the time for the next 2 years as an instrumentality of interstate or foreign commerce. The State Tax Assessor may for good cause extend for not more than 60 days the time for placing the instrumentality in use in interstate or foreign commerce. For purposes of this subsection, property is "placed in use as an instrumentality of interstate or foreign commerce" by its carrying of, or providing the motive power for the carrying of, a bona fide payload in interstate or foreign commerce, or by being dispatched to a specific location at which it will be loaded upon arrival with, or will be used as motive power for the carrying of, a payload in interstate or foreign commerce. For purposes of this subsection, "bona fide payload" means a cargo of persons or property transported by a contract or common carrier for compensation that exceeds the direct cost of carrying that cargo or pursuant to a legal obligation to provide service as a public utility or a cargo of property transported in the reasonable conduct of the purchaser's own nontransportation business in interstate commerce.

B. For purposes of this subsection, personal property is not in use as an instrumentality of interstate or foreign commerce when carrying only cargo that both originates and terminates within the State.

C. The exemption provided by this subsection is not limited to instrumentalities otherwise required to be exempt under the United States Constitution.

**Sec. 20. 36 MRSA §2554, sub-§4** is enacted to read:

**4. Purchases for resale not resold.** When a service provider purchases a service subject to tax under this chapter from another service provider using a resale certificate approved by the assessor and claims that it will resell the service, and then subsequently uses the service itself rather than reselling it, the purchaser becomes liable for any unpaid tax on that service on the date of such use.

**Sec. 21. 36 MRSA §2557, sub-§3, ¶G-1** is enacted to read:

G-1. Incorporated nonprofit medical clinics whose sole mission is to provide free medical care to the indigent or uninsured;

**Sec. 22. 36 MRSA §4366-A, sub-§1**, as amended by PL 2007, c. 438, §§91 and 92, is repealed.

**Sec. 23. 36 MRSA §4366-A, sub-§2**, as amended by PL 2007, c. 438, §93, is further amended to read:

**2. Provided to sellers.** The State Tax Assessor shall provide stamps to a licensed distributor upon submission by the licensed distributor of a cigarette tax return in a form prescribed by the assessor. The stamps must be of a design 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:

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

**Sec. 24. 36 MRSA §4366-A, sub-§3**, as enacted by PL 1997, c. 458, §10, is amended to read:

**3. Affixed to cigarettes.** A distributor shall affix, or cause to be affixed, in such manner as the assessor may specify, stamps of the proper denominations to individual packages of cigarettes sold or distributed by the distributor in this State. The distributor shall affix the stamps prior to the time in the manner specified by the assessor before the cigarettes are transferred out of the possession of the distributor. A distributor may not sell, offer for sale or display for sale in this State cigarettes that do not bear stamps evidencing the payment of the tax imposed by this chapter, except that a licensed distributor may sell

unstamped cigarettes to another licensed distributor if the sales are documented in a form prescribed by the assessor. The face value of the stamps must be considered as part of the retail cost of the cigarettes.

**Sec. 25. 36 MRSA §4366-A, sub-§6**, as repealed and replaced by PL 2003, c. 452, Pt. U, §13 and affected by Pt. X, §2, is amended to read:

**6. Penalties.** The following penalties apply to violations of this section.

A. A person who sells, offers for sale, displays for sale or possesses with intent to sell unstamped cigarettes in violation of this section commits a Class D crime.

~~B. A person who violates paragraph A when the person has 2 or more prior convictions for violation of this chapter commits a Class C crime.~~

C. A person who sells or transfers, reaffixes or reuses cigarette stamps or uses stamps more than ~~once~~ in violation of this section commits a Class D crime.

~~D. A person who violates paragraph C when the person has one or more prior convictions for violation of this chapter commits a Class C crime.~~

Except as otherwise specifically provided, violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

~~Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.~~

**Sec. 26. 36 MRSA §4641-C, sub-§7**, as amended by PL 2003, c. 344, Pt. D, §26, is further amended to read:

**7. Deeds pursuant to mergers or consolidations.** Deeds made pursuant to mergers or consolidations carried out pursuant to Title 13-C, chapter 11 of business entities, from which no gain or loss is recognized under the Internal Revenue Code. For purposes of this subsection, "business entity" means an association or legal entity organized to conduct business, including, without limitation, a domestic or foreign corporation, a limited partnership, a general partnership, a limited liability partnership, a limited liability company, a joint venture, a joint stock company or a business trust;

**Sec. 27. 36 MRSA §4715**, as enacted by PL 1987, c. 513, §10 and amended by PL 1991, c. 376, §61, is repealed and the following enacted in its place:

**§4715. Dealer reports of purchases and payment of taxes**

Every dealer shall keep, as a part of its permanent records, a record of all mahogany quahogs purchased at point of first sale. These records must be open for inspection by the State Tax Assessor at all times. On or before the last day of each month, every dealer shall

file a return with the assessor on a form furnished by the assessor stating the number of bushels of mahogany quahogs purchased by the dealer during the preceding calendar month. At the same time, the dealer shall pay to the assessor a tax of \$1.20 per bushel on all mahogany quahogs purchased by the dealer during the preceding calendar month. A dealer whose annual tax liability under this chapter does not exceed \$1,000 may file an annual return with payment on or before January 31st covering the prior calendar year. If the assessor determines that additional tax is due or that an overpayment of tax has been made, assessments or refunds must be made by the assessor to the dealer.

**Sec. 28. 36 MRSA §5219-BB**, as amended by PL 2007, c. 693, §32 and affected by §37, is further amended to read:

**§5219-BB. Credit for rehabilitation of historic properties after 2007**

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

A. "~~Affordable~~ Certified affordable housing project" means a decent, safe and sanitary dwelling, apartment or other living accommodation ~~for a household whose income does not exceed 60% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 412, 50 Stat. 888, Section 8, as amended that has been certified by the Maine State Housing Authority as an affordable housing project pursuant to Title 30-A, section 4722, subsection 1, paragraph DD.~~

B. "Certified historic structure" means a structure that has been certified by the Director of the Maine Historic Preservation Commission as a historic structure under Title 27, section 511.

C. "Certified qualified rehabilitation expenditure" means a qualified rehabilitation expenditure, as defined by the Code, Section 47(c)(2), made between January 1, 2008 and December 31, 2013 certified by the director under Title 27, section 511. For purposes of subsection 2, paragraph B, qualified rehabilitation expenditures incurred in the certified rehabilitation of a certified historic structure located in the State do not include a requirement that the certified historic structure be substantially rehabilitated.

D. "~~Director~~" means the director of the Maine Historic Preservation Commission.

**2. Credit allowed.** A taxpayer is allowed a credit against the tax imposed under this Part:

A. Equal to 25% of the taxpayer's certified qualified rehabilitation expenditures for which a tax

credit is claimed under Section 47 of the Code for a certified historic structure located in the State; or

B. Equal to 25% of the certified qualified rehabilitation expenditures of a taxpayer who incurs not less than \$50,000 and up to \$250,000 in certified qualified rehabilitation expenditures in the rehabilitation of a certified historic structure located in the State and who does not claim the federal credit with regard to those expenditures. The credit may be claimed for the taxable year in which the certified historic structure is placed in service, ~~except that a credit may not be claimed for expenditures incurred before January 1, 2008 or after December 31, 2013.~~

A taxpayer is allowed a credit under paragraph A or B but not both. A credit may not be claimed for expenditures incurred before January 1, 2008 or after December 31, 2013.

**3. Increased credit for a certified affordable housing project.** The credit allowed under this section is increased to 30% of certified qualified rehabilitation expenditures ~~if the project is also an for a certified affordable housing project. The 30% credit is available only for projects for which at least 50% of the aggregate square feet of the completed project is housing of which at least 50% of the aggregate square feet of the completed housing creates new affordable housing or for which at least 33% of the aggregate square feet of the completed project creates new affordable housing. Affordable housing created using the 30% credit must remain affordable for 30 years pursuant to a mechanism acceptable to the Maine State Housing Authority. The mechanism must provide that if the property does not remain affordable for 30 years, the owner of the property must pay to the Housing Opportunities for Maine Fund under Title 30-A, section 4853 an amount equal to the credit increase allowed to the taxpayer under this subsection plus interest at the rate of 7% per annum beginning when the property is placed in service and ending upon payment. If the certified affordable housing project for which an increased credit was allowed under this subsection does not remain an affordable housing project for 30 years from the date the affordable housing project is placed in service, the owner of the property is subject to the repayment provisions of Title 30-A, section 4722, subsection 1, paragraph DD. Upon notification by the Maine Historic Preservation Commission and the Maine State Housing Authority pursuant to Title 30-A, section 4722, subsection 1, paragraph DD, subparagraph 4, the State Tax Assessor shall raise the credit increase amount allowed under this subsection by one percentage point for tax years beginning in the calendar year of that notification. The maximum total credit allowed under this subsection may not exceed 35% of the taxpayer's certified qualified rehabilitation expenditures.~~



~~By August 1, 2009 and annually every August 1st thereafter to 2013, the Maine Historic Preservation Commission and the Maine State Housing Authority shall review the report issued pursuant to Title 27, section 511, subsection 5, paragraph A to determine the percentage of the total aggregate square feet rehabilitated and developed using both the 25% credit under subsection 2 and the 30% credit under this subsection that constitutes new affordable housing. If the total aggregate square feet of new affordable housing does not equal or exceed 30% of the total aggregate square feet of rehabilitated and developed completed projects eligible for a credit under this section, the commission and the authority shall notify the State Tax Assessor and the credit authorized in subsection 2, paragraph B is increased by 1% for that tax year and for each succeeding year in which the 30% affordable housing threshold is not reached until a maximum credit rate of 35% is reached.~~

**4. Maximum credit.** The credit allowed pursuant to this section may not exceed \$5,000,000 for each certified rehabilitation project under Section 47 of the Code placed into service in the State during the taxable year for which a credit is claimed under this section.

**5. Timing of credit.** Twenty-five percent of the credit allowed pursuant to this section must be taken in the taxable year the ~~property is placed into service~~ credit may be first claimed and 25% must be taken in each of the next 3 taxable years.

**6. Credit refundable.** The credit allowed under this section is fully refundable.

**7. Allocation of credit.** Credits allowed to a partnership, a limited liability company taxed as a partnership or multiple owners of property must be passed through to the partners, members or owners respectively pro rata in the same manner as under section 5219-G, subsection 1 or pursuant to an executed agreement among the partners, members or owners documenting an alternate allocation method. Credits may be allocated to partners, members or owners that are exempt from taxation under Section 501 (c)(3), Section 501 (c)(4) or Section 501 (c)(6) of the Code, and those partners, members or owners must be treated as taxpayers for the purposes of this subsection.

**8. Recapture.** A credit received under ~~this section~~ subsection 2 is subject to the same recapture provisions as apply to a credit received under Section 47 of the Code.

**9. Limitation.** A taxpayer who is eligible to claim a credit under section 5219-R, whether or not a credit is actually claimed, may not claim a credit under this section. In addition, a credit may not be claimed under this section with respect to expenditures incurred for rehabilitation of Building No. 2 in the

Lockwood Mill Historic District in the City of Waterville.

**Sec. 29. 36 MRS §5220, sub-§7** is enacted to read:

**7. Exceptions.** A resident individual who does not have a Maine income tax liability pursuant to this Part for the taxable year and who filed a federal income tax return for the taxable year for the sole purpose of claiming a credit under the Code, Section 32 is not required to file a Maine income tax return for that taxable year. The assessor, by rule, may identify other exceptions to the requirements of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 30. 36 MRS §5276, sub-§1**, as amended by PL 2005, c. 332, §25, 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 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 owed by the taxpayer, or by the taxpayer's spouse in the case of a joint return. The balance, after any setoff pursuant to section 5276-A or pursuant to an agreement entered into under section 112, subsection 13, must be refunded by the Treasurer of State. For purposes of this subsection, "any tax imposed under this Title" includes monetary restitution ordered to be paid to the bureau as part of a sentence imposed for a violation of this Title or Title 17-A.

**Sec. 31. 36 MRS §5332, sub-§2**, as enacted by PL 2003, c. 452, Pt. U, §17 and affected by Pt. X, §2, is repealed.

**Sec. 32. 36 MRS §5333, sub-§2**, as enacted by PL 2003, c. 452, Pt. U, §18 and affected by Pt. X, §2, is repealed.

**Sec. 33. 36 MRS §6665**, as enacted by PL 2005, c. 12, Pt. BBB, §5, is repealed.

**Sec. 34. 36 MRS §6758, sub-§3**, as enacted by PL 1995, c. 669, §5, is amended to read:

**3. Deposit and payment of revenue.** On or before June 30th of each year, the ~~Commissioner of Administrative and Financial Services~~ assessor shall ~~deposit an amount equal~~ certify to the State Controller the total retained employment tax increment revenues for the preceding calendar year for approved employment tax increment financing programs ~~to be transferred~~ to be transferred to the state employment tax increment contingent account established, maintained and administered by the ~~Commissioner of Administrative and Financial Services~~ State Controller from General Fund undedi-

cated revenue within the withholding tax category. On or before July 31st of each year, the ~~Commissioner of Administrative and Financial Services~~ assessor shall pay to each approved qualified business an amount equal to the retained employment tax increment revenues of that qualified business for the preceding calendar year.

**Sec. 35.** ~~36 MRSA §6902, sub-§2~~, as amended by PL 2007, c. 693, §36, is further amended to read:

**2. Procedure for reimbursement.** Within 6 weeks following receipt of a tax reimbursement and credit certificate pursuant to Title 5, section 13090-L, subsection 4, a media production company shall report to the State Tax Assessor that portion of certified production wages paid during the project period, together with any additional information the assessor may reasonably require. The assessor shall certify to the ~~commissioner the reimbursement amount to which a media production company is entitled~~ State Controller the amounts to be transferred to the media production reimbursement account established, maintained and administered by the State Controller from General Fund undedicated revenue within the withholding tax category. ~~The commissioner shall deposit the amounts certified by the assessor in a media production reimbursement account established, maintained and administered by the commissioner and shall pay those amounts to each media production company within 90 days of the receipt by the assessor of the media production company's report.~~

**Sec. 36. Application.** That section of this Act that repeals and replaces Title 36, section 4715 applies to tax periods beginning on or after January 1, 2010.

**Sec. 37. Retroactivity.** That section of this Act that enacts the Maine Revised Statutes, Title 36, section 2557, subsection 3, paragraph N applies retroactively to October 1, 2007. That section of this Act that amends Title 36, section 4641-C, subsection 7 applies retroactively to July 1, 2003. Those sections of this Act that amend Title 27, section 511, subsection 2; Title 30-A, section 4722, subsection 1, paragraphs BB and CC; and Title 36, section 5219-BB; and that section that enacts Title 30-A, section 4722, subsection 1, paragraph DD apply retroactively to June 30, 2008. The portion of this Act that enacts Title 36, section 1760, subsection 41, paragraph B applies retroactively to January 1, 2008. The portion of this Act that enacts Title 36, section 1760, subsection 41, paragraph C applies retroactively to June 15, 2001.

See title page for effective date.

**CHAPTER 362  
S.P. 523 - L.D. 1439**

**An Act To Conform State  
Mortgage Laws with Federal  
Laws**

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

**Whereas,** certain changes to federal mortgage laws and regulations will become effective sooner than 90 days after adjournment; and

**Whereas,** failure to begin implementation of corresponding changes to state laws would result in disruption of mortgage lending in this State; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**PART A**

**Sec. A-1. 9-A MRSA §8-103, sub-§1-A, ¶L,** as enacted by PL 2007, c. 273, Pt. A, §4 and affected by §§37 and 41, is repealed and the following enacted in its place:

L. "Creditor" has the same meaning as set forth in section 1-301, subsection 17, and in addition includes those entities defined as "lender" as set forth in 24 Code of Federal Regulations, Section 3500.2 and includes a mortgage broker.

**Sec. A-2. 9-A MRSA §8-103, sub-§1-A, ¶Q-1** is enacted to read:

Q-1. "Higher-priced mortgage loan" means either:

(1) A residential mortgage loan that is a "nontraditional mortgage" as defined in paragraph T; or

(2) A "rate spread home loan" as defined in paragraph V.

**Sec. A-3. 9-A MRSA §8-103, sub-§1-A, ¶S,** as enacted by PL 2007, c. 273, Pt. A, §4 and affected by §§37 and 41, is amended to read:

S. "Mortgage broker" has the same meaning as set forth in 24 Code of Federal Regulations, Section 3500.2, except as otherwise provided in this Article.