

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

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No. 1739

H.P. 1222

House of Representatives, March 26, 2007

An Act Concerning Technical Changes to the Tax Laws

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

Reference to the Committee on Taxation suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND

Clerk

Presented by Representative PIOTTI of Unity.
Cosponsored by Senator PERRY of Penobscot.

1 **Sec. 90. 36 MRSA §3218, 2nd ¶**, as amended by PL 2005, c. 332, §19, is further
2 amended to read:

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

8 **Sec. 91. 36 MRSA §4361, sub-§1**, as amended by PL 1997, c. 458, §1, is
9 repealed.

10 **Sec. 92. 36 MRSA §4362-A, sub-§2**, as amended by PL 2001, c. 526, §3, is
11 further amended to read:

12 **2. Applications; forms.** An application for a distributor's license must be made on a
13 form prescribed and issued by the assessor. Licenses are issued in the form prescribed by
14 the assessor and must contain the name and address of the ~~license holder~~ licensed
15 distributor, the address of the place of business and such other information as the assessor
16 may require for the proper administration of this chapter.

17 **Sec. 93. 36 MRSA §4362-A, sub-§5**, as enacted by PL 1997, c. 458, §3, is
18 amended to read:

19 **5. Revocation or suspension.** The assessor may revoke or suspend the license of a
20 ~~license holder~~ distributor for failure to comply with any provision of this chapter or if the
21 ~~license holder~~ distributor no longer imports or sells cigarettes. Any person aggrieved by
22 a revocation or suspension may ~~apply to the assessor for a hearing~~ request reconsideration
23 as provided in section 151.

24 **Sec. 94. 36 MRSA §4366-A, sub-§1, ¶A**, as enacted by PL 2003, c. 452, Pt. U,
25 §10 and affected by Pt. X, §2, is amended to read:

26 A. Sell, offer for sale or display for sale any cigarettes within this State that do not
27 bear stamps evidencing the payment of the tax imposed by this chapter; ~~or.~~

28 **Sec. 95. 36 MRSA §4366-A, sub-§1, ¶B**, as enacted by PL 2003, c. 452, Pt. U,
29 §10 and affected by Pt. X, §2, is repealed.

30 **Sec. 96. 36 MRSA §4366-A, sub-§2**, as amended by PL 2005, c. 622, §25 and
31 affected by §34, is further amended to read:

32 **2. Provided to sellers.** The State Tax Assessor shall provide stamps suitable to be
33 affixed to packages of cigarettes as evidence of the payment of the tax imposed by this
34 chapter. The assessor may permit a licensed distributor to pay for the stamps within 30
35 days after the date of purchase, if a bond satisfactory to the assessor in an amount not less
36 than 50% of the sale price of the stamps has been filed with the assessor conditioned upon
37 payment for the stamps. Such a distributor may continue to purchase stamps on a 30-day
38 deferral basis only if it remains current with its cigarette tax obligations. The assessor
39 may not sell additional stamps to a distributor that has failed to pay in full within 30 days.

1 for stamps previously purchased until such time as the overdue payment is received. The
2 assessor shall sell cigarette stamps to licensed distributors at the following discounts from
3 their face value:

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

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

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

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

8 **Sec. 97. 36 MRSA §4366-A, sub-§4**, as repealed and replaced by PL 2003, c.
9 452, Pt. U, §11 and affected by Pt. X, §2, is amended to read:

10 **4. Resale and reuse of stamps prohibited.** A distributor may not:

11 A. Sell, transfer, reaffix or ~~use more than once~~ reuse cigarette stamps issued by the
12 assessor pursuant to this chapter; ~~or.~~

13 ~~B. Violate paragraph A when the distributor has 2 prior convictions for violation of~~
14 ~~this chapter.~~

15 **Sec. 98. 36 MRSA §4366-A, sub-§4-A**, as enacted by PL 2003, c. 452, Pt. U,
16 §12 and affected by Pt. X, §2, is amended to read:

17 **4-A. Redemption of stamps.** The assessor shall redeem any unused, uncanceled
18 stamps presented within one year of the date of purchase by a licensed distributor at a
19 price equal to the amount paid for them. Credit for uncanceled stamps is allowed only
20 on full, unopened rolls unless the distributor ceases business as a distributor and returns
21 the license issued under section 4362-A. The assessor may also redeem, at face value,
22 cigarette tax stamps affixed to packages of cigarettes that have become unsalable if
23 application is made within 90 days of the return of the unsalable cigarettes to the
24 manufacturer. ~~The Treasurer of State shall provide out of money collected pursuant to~~
25 ~~this chapter, the funds necessary for the redemption.~~

26 **Sec. 99. 36 MRSA §4366-B**, as amended by PL 2003, c. 452, Pt. U, §14 and
27 affected by Pt. X, §2, is further amended to read:

28 **§4366-B. Importation of unstamped cigarettes**

29 **1. Generally.** Except as provided in subsection 2, only a licensed distributor ~~or a~~
30 ~~dealer~~ may import unstamped cigarettes into this State.

31 **2. Exception for personal use.** An individual who is not a licensed distributor ~~or a~~
32 ~~dealer~~ may transport cigarettes into this State and may transport cigarettes from place to
33 place within this State for the individual's personal use in a quantity not greater than 2
34 cartons.

35 **3. Evidence.** The possession of more than 2 cartons of unstamped cigarettes by a
36 person who is not a licensed distributor ~~or a dealer~~ is prima facie evidence of a violation
37 of this section.

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

2 A. A person who violates this section commits a Class E crime.

3 B. A person who violates this section when the person has one or more prior
4 convictions for violation of this section commits a Class D crime. Title 17-A, section
5 9-A governs the use of prior convictions when determining a sentence.

6 Violation of this section is a strict liability crime as defined in Title 17-A, section 34,
7 subsection 4-A.

8 **Sec. 100. 36 MRSA §4366-C**, as amended by PL 2003, c. 452, Pt. U, §15 and
9 affected by Pt. X, §2, is further amended to read:

10 **§4366-C. Sales of cigarettes in contravention of law**

11 **1. Cigarettes; stamps not affixed.** A ~~dealer or~~ distributor may not offer for sale,
12 sell or affix a stamp to a package of cigarettes if the package:

13 A. Does not comply with the Federal Cigarette Labeling and Advertising Act, 15
14 United States Code, Section 1331, et seq., for the placement of labels, warnings or
15 any other information for a package of cigarettes to be sold within the United States;

16 B. Is labeled "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S." or with
17 other wording indicating that the manufacturer did not intend that the product be sold
18 in the United States;

19 C. Has been altered by adding or deleting wording, labels or warnings described in
20 paragraphs A and B;

21 D. Has been imported into the United States in violation of 26 United States Code,
22 Section 5754; or

23 E. In any way violates federal trademark or copyright laws.

24 **2. Deceptive practice.** Selling a package of cigarettes described in subsection 1,
25 with or without a stamp, is an unfair or deceptive act or practice under the Maine Unfair
26 Trade Practices Act.

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

28 A. A ~~dealer or~~ distributor who violates this section commits a Class E crime.

29 B. A ~~dealer or~~ distributor who violates this section when the ~~dealer or~~ distributor has
30 one or more prior convictions for violation of this section commits a Class D crime.
31 Title 17-A, section 9-A governs the use of prior convictions when determining a
32 sentence.

33 Violation of this section is a strict liability crime as defined in Title 17-A, section 34,
34 subsection 4-A.

35 **Sec. 101. 36 MRSA §4372-A, sub-§2**, as amended by PL 1999, c. 616, §5, is
36 further amended to read:

37 **2. Exceptions.** The following cigarettes are not subject to seizure:

- 1 A. Unstamped cigarettes in the possession of a licensed distributor;
- 2 B. Unstamped cigarettes in the course of transit from ~~without~~ outside the State ~~and~~
3 that are consigned to a licensed distributor; and
- 4 C. Unstamped cigarettes in a quantity of 2 cartons or less in the possession of an
5 individual who is not a licensed distributor.

6 Notwithstanding paragraphs A, B and C, cigarettes described in section 4366-C,
7 subsection 1 are subject to seizure under the process described in subsection 3, unless the
8 ~~dealer or~~ distributor can prove the cigarettes are to be exported out of the country.

9 **Sec. 102. 36 MRSA §4373-A**, as amended by PL 2001, c. 396, §32, is further
10 amended to read:

11 **§4373-A. Records required; inspection and examination; assessment of tax**
12 **deficiency**

13 **1. Generally.** Distributors ~~and dealers~~ shall keep complete and accurate records of
14 all cigarettes that they manufacture, produce, purchase, transfer or sell. The records must
15 be of a kind and in the form prescribed by the State Tax Assessor and must be safely
16 preserved for 6 years in a manner that ensures permanency and accessibility by
17 authorized agents of the assessor. ~~Records maintained by dealers must include an~~
18 ~~inventory of stamped cigarettes, by pack size.~~ Records maintained by distributors must
19 include the following data on either a calendar or fiscal year basis:

- 20 A. An inventory of unaffixed Maine cigarette stamps by denomination;
- 21 B. An inventory of stamped cigarettes, by pack size;
- 22 C. An inventory of unstamped cigarettes, by pack size; and
- 23 D. Copies of all documents supporting redemption for tax on unused, uncanceled
24 stamps and for unsalable cigarettes.

25 If the rate of tax imposed by section 4365 is changed, a distributor shall take a new
26 inventory.

27 **2. Inspection and examination; penalty.** The assessor or any authorized agent may
28 enter into or upon any premises where there is reason to believe that cigarettes are
29 possessed, stored or sold, and may examine the books, papers, records and cigarette stock
30 of any distributor ~~or dealer~~ to determine compliance with the provisions of this chapter.
31 Failure or refusal to permit an examination pursuant to this subsection is a civil violation
32 for which a fine in the amount of \$250 must be imposed, no part of which may be
33 suspended.

34 **3. Assessment of tax deficiency; presumptions.** If the assessor determines that a
35 distributor has not purchased sufficient stamps to cover sales of cigarettes or ~~that a dealer~~
36 has made sales of unstamped cigarettes, the assessor shall assess the tax deficiency
37 pursuant to section 141. When a distributor ~~can not~~ cannot produce evidence of sufficient
38 stamp purchases to cover receipts and sales or other disposition of cigarettes, it is
39 presumed that the cigarettes were sold without having the proper stamps affixed to them.

1 **Sec. 103. 36 MRSA §4384**, as enacted by PL 2003, c. 705, §7, is amended to
2 read:

3 **§4384. Reporting and payment of tax**

4 A person who is not a licensed distributor ~~or dealer~~ who imports, receives or
5 otherwise acquires unstamped cigarettes for use or consumption in the State in a quantity
6 greater than 2 cartons in any one month from a person other than a licensed distributor ~~or~~
7 ~~dealer~~ shall file, on or before the last day of the month following each month in which
8 unstamped cigarettes were acquired, a return on a form prescribed by the State Tax
9 Assessor together with payment of the tax imposed by this chapter at the rate provided in
10 section 4365. The return must report the number of unstamped cigarettes imported,
11 received or otherwise acquired during the previous calendar month and additional
12 information the assessor may require.

13 **Sec. 104. 36 MRSA §4404, first ¶**, as amended by PL 2005, c. 627, §10, is
14 further amended to read:

15 Every distributor subject to the licensing requirement of section 4402 shall file, on or
16 before the last day of each month ~~submit, a return~~ on a form prescribed and furnished by
17 the State Tax Assessor, ~~a report~~ together with payment of the tax due under this chapter
18 ~~stating~~. The return must state the quantity and the wholesale sales price of all tobacco
19 products held, purchased, manufactured, brought in or caused to be brought in from
20 outside the State or shipped or transported to retailers within the State during the
21 preceding calendar month. Every ~~such~~ distributor shall keep a complete and accurate
22 record at its principal place of business to substantiate all receipts and sales of tobacco
23 products.

24 **Sec. 105. 36 MRSA §4404, 2nd ¶**, as amended by PL 2001, c. 382, §3, is further
25 amended to read:

26 ~~Such monthly reports~~ The return must contain such include further information as the
27 ~~State Tax Assessor~~ assessor may prescribe and must show a credit for any tobacco
28 products exempted as provided in section 4403. Records must be maintained to
29 substantiate the exemption. ~~Tobacco Tax previously paid on tobacco products previously~~
30 ~~taxed~~ that are returned to a manufacturer because the product has become unfit for use,
31 sale or consumption may be taken as a credit on a subsequent return upon receipt of the
32 credit notice from the original supplier.

33 **Sec. 106. 36 MRSA §4404-A, sub-§3**, as enacted by PL 2005, c. 627, §11, is
34 amended to read:

35 **3. Exception for personal use.** A person who is not a licensed distributor may:

36 A. ~~Transport~~ Import or transport tobacco products other than cigars into this State
37 and transport those tobacco products from place to place within this State for personal
38 use in a quantity not greater than one pound; or

39 B. Import or transport cigars into this State and transport those cigars from place to
40 place within this State for personal use in a quantity of no more than 125 cigars.

1 Untaxed tobacco products imported or transported into this State in any quantity are
2 subject to the tax imposed by section 4403.

3 **Sec. 107. 36 MRSA §5223**, as enacted by P&SL 1969, c. 154, Pt. F, §1, is
4 repealed.

5 **Sec. 108. 36 MRSA §5228, sub-§1, ¶B**, as enacted by PL 1985, c. 691, §§35 and
6 48, is amended to read:

7 B. "Estimated tax" means the total amount which of tax that a person estimates as the
8 total amount of income tax which will be due for a taxable year under this Part,
9 exclusive of a withholder's liability for taxes withheld for a taxable year, less any
10 allowable credits for that taxable year.

11 **Sec. 109. 36 MRSA §5228, sub-§2**, as amended by PL 1997, c. 668, §35 and
12 affected by §43, is further amended to read:

13 **2. Requirement to pay estimated tax.** Every person subject to taxation under this
14 Part shall make payment of estimated tax as required by this Part ~~in such form as the~~
15 ~~State Tax Assessor may require.~~ If the person's ~~income~~ tax liability pursuant to this Part,
16 exclusive of a withholder's liability for taxes withheld, reduced by allowable credits for
17 the taxable year, is less than \$1,000 for the taxable year, or, if the person had less than
18 \$1,000 tax liability under this Part for the prior tax preceding taxable year, the
19 requirement to make the estimated tax payments is waived.

20 **Sec. 110. 36 MRSA §5228, sub-§3, ¶A**, as enacted by PL 1985, c. 691, §§35
21 and 48, is amended to read:

22 A. An amount equal to the ~~preceding year's state income~~ person's tax liability under
23 this Part for the preceding taxable year, if that preceding year was a taxable year of
24 12 months; or

25 **Sec. 111. 36 MRSA §5228, sub-§3, ¶B**, as amended by PL 1991, c. 528, Pt.
26 DDD, §1 and affected by §2 and Pt. RRR and amended by c. 591, Pt. DDD, §1 and
27 affected by §2, is further amended to read:

28 B. An amount equal to 90% of the ~~income~~ person's tax liability under this Part for
29 the current taxable year determined without taking into account the current year's
30 investment tax credit set forth in section 5219-E, except that for farmers and persons
31 who fish commercially, this amount is 66 2/3% of the person's tax liability under this
32 Part for the current taxable year.

33 **Sec. 112. 36 MRSA §5255**, as amended by PL 2005, c. 618, §16, is further
34 amended to read:

35 **§5255. Failure to withhold**

36 A person who fails to deduct and withhold tax as required by this chapter is relieved
37 from liability for that tax to the extent that the tax against which that tax may be credited
38 has been paid, but the person is not relieved from liability for any additions to tax,

1	General Fund	2003-04	2004-05
2	Positions - Legislative Count	(11,000)	(11,000)
3	Personal Services	765,194	619,583
4	All Other	1,102,625	65,021
5			
6	General Fund Total	<u>1,867,819</u>	<u>684,604</u>

7 **SUMMARY**

8 This bill makes the following changes to the laws governing taxation.

9 1. It repeals a provision that authorizes the State Tax Assessor to subtract from
10 revenues credit card fees associated with income tax returns filed by telephone. Maine's
11 income tax Telefile system has been discontinued.

12 2. It replaces the imprecise term "report" with the defined term "return" throughout
13 the tax laws.

14 3. It authorizes a 120-day extension of the time allowed for filing a return after the
15 taxpayer has received a formal demand for filing. The Department of Administrative and
16 Financial Services, Bureau of Revenue Services has been administratively granting such
17 extensions.

18 4. It provides clear statutory authority for the State Tax Assessor to disclose the fact
19 that a person has or has not been issued a certificate of exemption under the sales tax law
20 or the service provider tax law. The bureau has administratively interpreted existing law
21 to authorize these disclosures.

22 5. It replaces an obsolete reference to the Bureau of Property Taxation, which was
23 merged into the Bureau of Taxation, now the Bureau of Revenue Services, a number of
24 years ago.

25 6. It clarifies that all owners of property proposed for tree growth classification must
26 consent to the application in writing.

27 7. It repeals an obsolete provision that related to valuation of tree growth property
28 for taxable years prior to April 1, 1983.

29 8. It repeals obsolete language relating to the computation of tree growth
30 reimbursements and authorizes the State Tax Assessor to adopt rules governing the
31 assessment of tree growth land and the computation of reimbursements.

32 9. It repeals obsolete provisions relating to the administration of changes to the
33 Maine Tree Growth Tax Law that were enacted in 1981 and corrects an erroneous
34 reference.

1 39. It adds a specific provision to clarify that gasoline tax refunds for fuel used in
2 aircraft are reduced by the amount of Maine use tax due on the fuel. This is consistent
3 with longstanding administrative practice of the bureau.

4 40. It eliminates an obsolete cross-reference to the affidavit prescribed for registered
5 sellers in Title 36, section 3205. Title 36, section 3205 no longer contains any reference
6 to an affidavit.

7 41. It repeals statutes that formerly governed taxation of fuel consumed by interstate
8 buses. This tax is now reported under the International Fuel Tax Agreement.

9 42. It clarifies that distillates delivered to a consumer or a retail outlet, whether or
10 not "on consignment," are deemed to have been sold for purposes of the special fuel tax.
11 This is longstanding administrative policy of the bureau.

12 43. It clarifies that propane shrinkage allowances must be calculated on an annual
13 basis. This is current administrative policy of the bureau.

14 44. It limits the exemption for sales of special fuel to the State and its political
15 subdivisions to bulk sales. Because of the way the tax is imposed it is not practical to
16 make exempt sales at the pump. Governmental entities may apply for a refund of the tax
17 paid on those sales.

18 45. It removes obsolete and redundant language relating to refund applications by
19 special fuel users.

20 46. It eliminates the requirement that original invoices must be submitted with
21 refund claims for special fuel tax paid by political subdivisions. This requirement has not
22 been enforced for several years. It also repeals an obsolete provision that governed
23 refunds of tax paid before April of 1986.

24 47. It clarifies the administration of the special fuel tax.

25 48. It eliminates the requirement that original invoices must be submitted with
26 refund claims for special fuel tax paid on fuel used in locally encouraged vehicles. This
27 requirement has not been enforced for several years. It also eliminates the requirement
28 that refund claims must be filed quarterly. By administrative policy they may be filed for
29 any open period.

30 49. It eliminates the requirement that original invoices must be submitted with
31 refund claims for special fuel tax paid on fuel used off-highway. This requirement has not
32 been enforced for several years. It also eliminates a reference to a "monthly" refund claim
33 since there is no requirement that the claims be filed monthly.

34 50. It repeals the definition of "dealer" from the cigarette tax law. There is no longer
35 any distinction between dealers and distributors.

36 51. It clarifies the cigarette tax law by replacing references to "license holder" with
37 the defined term "distributor."

- 1 52. It repeals superfluous criminal provisions and clarifies an ambiguous statute
2 prohibiting sale and reuse of cigarette stamps.
- 3 53. It repeals obsolete provisions setting discount rates for cigarette stamps that are
4 no longer in effect.
- 5 54. It prohibits the return of partial rolls of cigarette stamps for credit unless the
6 person is ceasing business as a distributor. This is longstanding bureau policy. It also
7 repeals unnecessary language regarding the payment of refunds.
- 8 55. It deletes the obsolete term "dealer" from the cigarette tax law and clarifies
9 certain record-keeping requirements.
- 10 56. It clarifies that the personal use exception applies to importation of tobacco
11 products other than cigars and that any quantity of untaxed tobacco products imported
12 into the State is subject to tax.
- 13 57. It repeals the law requiring certain fiduciaries to notify the State Tax Assessor of
14 their appointment. This requirement has not been enforced for many years.
- 15 58. It clarifies that a taxpayer's estimated tax liability includes all taxes due under the
16 income tax law except withholding tax.
- 17 59. It clarifies that a person who fails to withhold tax as required is not relieved from
18 liability for penalties for failure to file returns and pay withholding tax. This is the
19 bureau's longstanding position.
- 20 60. It consolidates 2 closely related provisions relating to overpayments of
21 withholding tax by employers and pass-through entities into a single subsection and
22 eliminates a superfluous authorization for rulemaking that has never been implemented.
- 23 61. It clarifies the determination of the period during which a claimant under the
24 Circuitbreaker Program must have been domiciled in Maine.
- 25 62. It clarifies the definition of "elderly household" for purposes of the
26 Circuitbreaker Program. The new language is consistent with the way the statute has been
27 administratively interpreted by the bureau.
- 28 63. It restructures for clarity the definition of "income" in the Circuitbreaker Program
29 law, but does not change the way in which income is determined for purposes of the
30 program.
- 31 64. It makes technical changes to the business equipment tax reimbursement law. It
32 also corrects a conflict created by Public Law 2005, chapters 618 and 623, which affected
33 the same provision of law, by incorporating changes made by both laws.
- 34 65. It eliminates the requirement for an annual revenue enhancement and amnesty
35 report to the Legislature by the bureau.