An Act To Provide Tax Treatment Consistency for Limited Liability and S Corporations

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

Whereas, Maine tax law does not place a corporate tax on limited liability companies and S corporations, so-called "pass-through entities," but rather imposes the tax on the partners of limited liability companies or members of S corporations; and

Whereas, the State of New Hampshire has adopted an entity system of taxation and imposes an entity tax on limited liability companies and S corporations; and

Whereas, current interpretation of Maine tax law prevents Maine Revenue Services from crediting partners of a limited liability company and members of an S corporation their share of the entity's tax paid to the State of New Hampshire; and

Whereas, the State of Massachusetts does recognize the New Hampshire entity tax on pass-through entities as personal income tax; and

Whereas, Maine's current position on this issue places Maine in an uncompetitive position for Maine residents; 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:

Sec. 1. 36 MRSA §5217-A, as amended by PL 2003, c. 673, Pt. JJ, §4 and affected by §6, is repealed and the following enacted in its place:

§ 5217-A. Income tax paid to other taxing jurisdiction

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

A. "Creditable income tax" means a tax imposed by another state of the United States, a political subdivision of any such state, the District of Columbia or any political subdivision of a foreign country that is analogous to a state of the United States with respect to income subject to tax under this Part that is derived from sources in that taxing jurisdiction. In determining whether income is derived from sources in another jurisdiction, the assessor may not employ the law of the other jurisdiction but shall instead assume that a statute equivalent to section 5142 applies in that jurisdiction.

B. "Member" has the same meaning as in section 5250-B, subsection 1, paragraph A.

C. "Pass-through entity" has the same meaning as in section 5250-B, subsection 1, paragraph C.

2. Credit. A resident individual is allowed a credit against the tax otherwise due under this Part, excluding the tax imposed by section 5203-C, for the amount of creditable income tax for the taxable year imposed on:

A. That individual; or

B. A pass-through entity of which the individual is a member to the extent the creditable income tax is imposed on that member's distributive share or pro rata share, as the case may be, of the pass-through entity's income.

3. Limitation. The credit allowed under this section for any of the specified taxing jurisdictions may not exceed the proportion of the tax otherwise due under this Part, excluding the tax imposed by section 5203-C, that the amount of the taxpayer's Maine adjusted gross income derived from sources in that taxing jurisdiction bears to the taxpayer's entire Maine adjusted gross income; except that, when a credit is claimed for taxes paid to both a state and a political subdivision of a state, the total credit allowable for those taxes does not exceed the proportion of the tax otherwise due under this Part, excluding the tax imposed by section 5203-C, that the amount of the taxpayer's Maine adjusted gross income derived from sources in the other state bears to the taxpayer's entire Maine adjusted gross income.

Sec. 2. Application. This Act applies to tax years beginning on or after January 1, 2008.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill allows a member of a pass-through entity, such as a limited liability company or S corporation, to receive an income tax credit against taxes imposed on that member's distributive share or pro rata share of the pass-through entity's income.